124

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In the Supreme Court of the United States

STATE OF CALIFORNIA; CALIFORNIA GAMBLING CONTROL COMMISSION, AN AGENCY OF THE STATE OF CALIFORNIA; AND ARNOLD SCHWARZENEGGER, AS GOVERNOR OF THE STATE OF CALIFORNIA, *Petitioners,*

v.

SAN PASQUAL BAND OF MISSION INDIANS, A FEDERALLY RECOGNIZED INDIAN TRIBE, *Respondent.*

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

In 1999, the State of California and sixty-one federally recognized tribes entered into virtually identical tribal-state class III gaming compacts (Compacts) under the authority of the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721 (IGRA). The Compacts allow those tribes to operate slot machines if they have been issued licenses for those devices from a prioritized and limited license pool established by the Compacts, or if they have obtained a compact amendment allowing them to operate slot machines without reference to that license pool. The question presented is:

Whether a court may conclude that an absent person need not be joined, under Federal Rule of Civil Procedure 19(a), on the ground that, in future cases, if multiple district courts issue inconsistent decisions, the court of appeals could simply resolve the inconsistencies?

TABLE OF CONTENTS

Page

Petition for a Writ of Certiorari 1
Opinions Below 1
Jurisdiction 1
Statutory Provisions Involved 1
Statement of the Case 1
Reasons for Granting the Petition 6
Discussion 7
I. The Ninth Circuit's refusal to recognize the State's exposure to inconsistent obligations warrants this Court's review 7
Conclusion 9

TABLE OF AUTHORITIES

Page

CASES

Acton Co. v. Bachman Foods, Inc.
668 F.2d 76 (1st Cir. 1982) 8

Cachil Dehe Band of Wintun Indians v. California
536 F.3d 1034 (9th Cir. 2008) 5

Cachil Dehe Band of Wintun Indians v. California
547 F.3d 962 (9th Cir. 2008) 5

Knutzen v. Eben Ezer Lutheran Hous. Ctr.
815 F.2d 1343 (10th Cir. 1987) 7

Provident Tradesmens Bank & Trust Co. v. Patterson
390 U.S. 102 (1968) 7

Republic of Philippines v. Pimentel
128 S. Ct. 2180 (2008) 7, 8

United States v. Donovan
429 U.S. 413 (1977) 7

STATUTES

United States Code, Title 28
§ 19 1
§ 1254(1) 1
§ 1361 4
§ 1362 4

TABLE OF AUTHORITIES

Page

COURT RULES

Federal Rule of Civil Procedure
19 ..... passim
19(a) 4, 6, 7
19(a)(1) 8

Supreme Court Rule
10(a) 7
10(c) 7

TABLE OF CONTENTS

Page

Ninth Circuit memorandum (Oct. 6, 2008), Case No. 07-55536, *San Pasqual Band of Mission Indians v. State of California, et al.* (Appendix A) 1

Ninth Circuit order denying petition for panel Rehearing (Dec. 29, 2008), Case No. 07-55536, *San Pasqual Band of Mission Indians v. State of California, et al.* (Appendix B) 4

District court order granting motion to dismiss second amended complaint (Mar. 20, 2007), Case No. 06-cv-0988-LAB (AJB), *San Pasqual Band of Mission Indians v. State of California, et al.* (Appendix C) 5

Ninth Circuit order amending opinion and Denying petition for panel rehearing and petition for rehearing en banc and amended opinion (August 8, 2008), Case No. 06-16145, *Cachil Dehe Band of Wintun Indians of the Colusa Indian Community v. State of California, et al.* (Appendix D) 35

Ninth Circuit opinion (Aug. 8, 2008), Case No. 06-16145, *Cachil Dehe Band of Wintun Indians of the Colusa Indian Community v. State of California, et al.* (Appendix E) 61

District court memorandum and order granting defendants' motion for judgment on the pleadings (May 16, 2006), Case No. CIV S-04-2265 FCD KJM, *Cachil Dehe Band of Wintun Indians of the Colusa Indian Community v. State of California, et al* (Appendix F) 86

TABLE OF CONTENTS (Continued)

Page

Ninth Circuit memorandum (Aug. 8, 2008), Case No. 06-55259, *Rincon Band of Luiseno Mission Indians of the Rincon Reservation v. Arnold Schwarzenegger, et al.* (Appendix G) 104

Ninth Circuit order denying petition for panel Rehearing and petition for rehearing en banc (Nov. 14, 2008), Case No. 06-55259, *Rincon Band of Luiseno Mission Indians of the Rincon Reservation v. Arnold Schwarzenegger, et al.* (Appendix H) 108

District court order granting in part and denying in part plaintiff's motion for reconsideration (Mar. 22, 2005), Case No. 04-CV-01151 W, *Rincon Band of Luiseno Mission Indians of the Rincon Reservation v. Arnold Schwarzenegger, et al.* (Appendix I) 110

Federal Rules of Civil Procedure, Rule 19 (Appendix J) 121

Tribal-State Gaming Compact Between the State of California and the San Pasqual Band of Mission Indians (Sep. 10, 1999) (Appendix K) 123

Amendment to the Tribal-State Compact Between the State of California and the Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation (Jun. 21, 2004) (Appendix L) 179

Amendment to the Tribal-State Compact Between The State of California and the Pechanga Band of Luiseno Indians (Aug. 28, 2006) (Appendix M) 219

PETITION FOR A WRIT OF CERTIORARI

The State of California, California Gambling Control Commission, and Arnold Schwarzenegger, Governor of California, appearing by and through Edmund G. Brown Jr., Attorney General of California, respectfully petition this Honorable Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The court of appeals' memorandum decision (App. A, *infra,* at 1-3) and the district court's order (App. C, *infra*, at 5-34) are unreported.

JURISDICTION

The court of appeals entered judgment on October 6, 2008. (App. A, *infra*, at 1.) On December 29, 2008, the court of appeals denied a timely petition for panel rehearing or rehearing en banc. (App. B, *infra,* at 4.) This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The pertinent statutory provision, specifically Federal Rule of Civil Procedure 19, 28 U.S.C. § 19, is set forth in full in Appendix J to this brief. (App. J, *infra,* at 121-22.)

STATEMENT OF THE CASE

In 1999, the State of California (State) and sixty-one federally-recognized Indian tribes entered into class III gaming compacts (the Compacts) that provided the tribes the right to operate slot machines and certain banked and percentage card games free of non-tribal competition for twenty years. (*See, e.g.,* Compact Between the State of California and the San

Pasqual Band of Mission Indians (Sept. 10, 1999), App. K, *infra*, at 123-78; 1999 Compact *available at* http://www.cgcc.ca.gov/compacts.asp (follow "1999 Compact" hyperlink).)

Specifically, the Compacts allow each tribe to operate up to 350 slot machines or the number of slot machines that tribe was operating on September 1, 1999, whichever is greater. (App. K, *infra,* at 130.) In addition, the Compacts provide that the tribes may operate additional slot machines if they are able to obtain licenses for those devices from a license pool. (*Id.* at 131.)

The Compacts limit the number of available licenses according to a formula and require that the tribes pay specified fees in consideration of receiving such licenses. (*Id.*) They also establish a priority system for the issuance of these licenses. (*Id.* at 131-32.) The California Gambling Control Commission (Commission), as the trustee of the fund into which such license fees are paid, calculated the number of available licenses, and utilized the priority system established by the Compacts to issue licenses to tribes that applied for them, until the available licenses were exhausted. From that point onward, the Commission utilized the Compacts' priority system to issue licenses that became available through the return or relinquishment of previously-issued licenses to the license pool. Other than through acquisition of such licenses under the Compacts' priority system, tribes seeking to operate additional slot machines were required to obtain the right to operate those machines through a compact amendment. (*Id.* at 133, 169-70.)

After the license pool was depleted, the Governor and various tribes commenced compact amendment negotiations. In those negotiations, the tribes sought to obtain the right to operate slot machines other than through issuance of licenses by the Commission from the license pool established by the Compacts. In 2004, the Governor and five tribes

arrived at an agreement on certain amendments to the Compacts (*see, e.g.*, Amendment to the Tribal-State Compact Between the State of California and the Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation (Jun. 21, 2004), App. L, *infra*, at 179-218; 2004 Amended Compact *available at* http://www.cgcc.ca.gov/compacts.asp (follow "Pauma Band of Luiseno Mission Indians" hyperlink)) subsequently ratified by the California Legislature under provisions of California law and approved by the Secretary of the Interior under IGRA. In 2007, compact amendments arrived at with several additional tribes in 2006 became effective. (*See, e.g.*, Amendment to Tribal-State Compact Between the State of California and the Pechanga Band of Luiseno Indians (Aug. 28, 2006), App. M, *infra*, at 219-65; 2007 Amended Compact *available at* http://www.cgcc.ca.gov/compacts.asp (follow "Pechanga Band of Luiseno Mission Indians" hyperlink).) The amendments allowed the tribes to operate additional slot machines without licenses, increased the period during which the tribes' slot machines could be operated and provided a monetary remedy in the event non-tribal class III gaming is permitted in California. In return, the tribes agreed to: (a) increase their revenue sharing contributions to the State over that which was required under the Compacts; (b) mitigate adverse environmental impacts stemming from their casino operations; and (c) protect the health and safety of patrons and employees through a series of regulatory measures not found in the Compacts. (*See, generally*, App. L, *infra*, at 179-218; App. M, *infra*, at 220-65.)

The terms of these compact amendments render the operation of slot machines under the amendments more costly to the signatory tribes than under the Compacts' license structure. (*E.g.*, *compare* 1999 Compact per device costs, App. K, *infra*, at 131-33; *with* per device costs in a 2004 amendment, App. L, *infra*, at 181-85; and in a 2007 amendment, App. M, *infra*, at 221-25.)

The San Pasqual Band of Mission Indians (San Pasqual) filed suit against the State, the Commission and Governor Schwarzenegger for breach of Compact on the basis of the Commission's alleged miscalculation regarding the number of available slot machine licenses. (App. A, *infra,* at 2.) The district court's jurisdiction was invoked under 28 U.S.C. §§ 1361 and 1362, and the Tribal-State Compact between the State and San Pasqual.

In separate suits, the Cachil Dehe Band of Wintun Indians of the Colusa Indian Community (Colusa) and the Rincon Band of Luiseno Mission Indians (Rincon), likewise, sued the State for breach of compact based upon a claim the Commission had miscalculated the number of licenses available. (App. D, *infra,* at 37; App. G, *infra,* at 105.)

Three separate district court judges dismissed all three suits under Rule 19 on the ground that the other tribes that were signatories to the Compacts were necessary (required)[1] parties that could not be joined because of their tribal sovereign immunity. The district court in San Pasqual's suit determined that the absent tribes were required parties because the State faced the possibility of inconsistent obligations with respect to the number of slot machine licenses available under the Compacts. (App. C, *infra,* at 21-22.) In addition, it ruled that the five tribes with amended compacts had a contract-derived interest in any calculation of the maximum number of slot machines that a signatory tribe could operate without a compact amendment. (*Id.* at 27-28.)

The district court in Rincon's suit also concluded that the absent tribal signatories to the Compacts were required because the State faced the risk of

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[1] Rule 19's language has been amended since the district court decisions. The word "required" replaced the word "necessary" in Rule 19(a).

inconsistent obligations. (App. I, *infra*, at 115.) Similarly, the district court in Colusa's suit determined that the absent tribes were required, in part, because the Commission could face inconsistent obligations from multiple suits on the same claims for relief with respect to the number of available slot machine licenses. (App. F, *infra*, at 93-94.)

Each district court decision was appealed to the Ninth Circuit. Colusa's and Rincon's appeals were not consolidated, but were argued on the same day. (App. D, *infra*, at 35; App. G, *infra*, at 104.) The Ninth Circuit did not permit oral argument on San Pasqual's appeal. (App. A, *infra*, at 2.) The Ninth Circuit issued a published decision in Colusa's appeal, in which it reversed the district court's decision to dismiss each of Colusa's breach of compact claims for relief. (App. E, *infra*, at 61-62; *see Cachil Dehe Band of Wintun Indians v. California*, 536 F.3d 1034 (9th Cir. 2008).) The court of appeal held that the district court had abused its discretion in finding the absent tribes were required parties. (App. E, *infra*, at 70-72.) The court then issued unpublished memoranda decisions in Rincon's and San Pasqual's appeals, reversing the district court decisions based on its decision in Colusa's appeal. (App. A, *infra*, at 1-3; App. G, *infra*, at 104-07.)

On October 24, 2008, the Ninth Circuit amended its opinion in Colusa's appeal (App. D, *infra*, at 35-36; *see Cachil Dehe Band of Wintun Indians v. California*, 547 F.3d 962 (9th Cir. 2008)), and subsequently denied petitions for rehearing filed by the defendants in all three appeals (App. B, *infra*, at 4; App. D, *infra*, at 36-37; App. H, *infra*, at 108-09). The amended opinion in Colusa's appeal did not alter the Ninth Circuit's original holding that the absent tribes were not required parties.

The Ninth Circuit held that the State would not be subject to a significant risk of inconsistent obligations within the meaning of Rule 19(a) with respect to the number of slot machine licenses that

could be issued because "should different district courts reach inconsistent conclusions with respect to the size of the license pool created under the 1999 Compacts, such inconsistencies could be resolved in an appeal to this court." (App. D, *infra,* at 50 n.12.)

REASONS FOR GRANTING THE PETITION

The Ninth Circuit's decision warrants this Court's review for the same reason its decisions in the *Colusa* and *Rincon* cases warrant review.[2] Review is appropriate because the appellate court's decision conflicts with established construction of a rule of civil procedure federal courts routinely apply in countless cases each year.

The Ninth Circuit's decision undermines a fundamental purpose that this Court and other circuits have identified as underlying Rule 19. That purpose is to avoid exposing a party to the possibility of facing inconsistent obligations stemming from multiple suits on the same claim for relief in different actions by requiring the joinder, under Rule 19(a), of absent parties that might bring the same claim in a different action.

Absent this Court's review, the Ninth Circuit's decision could create severe strains in the efficient administration of justice throughout the country by inundating already overburdened district courts with multiple suits raising the same claim for relief. Accordingly, this Court's plenary review is necessary to correct a decision that directly conflicts with controlling authority from this Court and decisions of other federal courts of appeal on an important matter, departs from the accepted and usual course

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[2] The State filed petitions for writ of certiorari in *State of California, et al v. Cachil Dehe Band of Wintun Indians of the Colusa Indian Community*, No. 08-931, on January 22, 2009, and *Arnold Schwarzenegger, et al. v. Rincon Band of Luiseno Mission Indians*, No. 08-1030, on February 11, 2009.

of judicial proceedings, and calls for the exercise of this Court's supervisory power. *See* Sup. Ct. R. 10(a) & (c); *United States v. Donovan*, 429 U.S. 413, 422 (1977) (certiorari may be granted where the issues simply "concern the construction of a major federal statute"). The State, the Commission and Governor Schwarzenegger, therefore, respectfully request this Court to hold this petition pending disposition of the petition for writ of certiorari filed in *State of California, et al. v. Cachil Dehe Band of Wintun Indians of the Colusa Indian Community,* No. 08-931, and if that petition is granted, grant and hold this petition pending disposition of that case.

DISCUSSION

I. THE NINTH CIRCUIT'S REFUSAL TO RECOGNIZE THE STATE'S EXPOSURE TO INCONSISTENT OBLIGATIONS WARRANTS THIS COURT'S REVIEW

As this Court and other circuits have found, the "social interest in the efficient administration of justice and the avoidance of multiple litigation is an interest that has traditionally been thought to support compulsory joinder of absent and potentially adverse claimants under Rule 19(a)." *Republic of Philippines v. Pimentel,* 128 S. Ct. 2180, 2193 (2008) (*citing Illinois Brick Co. v. Illinois,* 431 U.S. 720, 737-38 (1977)) (internal quotation marks omitted); *see also Provident Tradesmens Bank & Trust Co. v. Patterson*, 390 U.S. 102, 111 (1968) (recognizing that one focus of Rule 19 is "the interest of the courts and the public in complete, consistent, and efficient settlement of controversies"); *Knutzen v. Eben Ezer Lutheran Hous. Ctr.*, 815 F.2d 1343, 1356 (10th Cir. 1987) (holding underlying Rule 19 policies include "avoiding multiple litigation, providing the parties with complete and effective relief in a single action, and protecting the absent persons from the possible prejudicial effect of deciding the case without them") (quoting 7 Charles Wright, Arthur Miller & Mary Kay Kane, Federal Practice and Procedure 1604, p.

40 (2d ed. 1986)); *Acton Co. v. Bachman Foods, Inc.*, 668 F.2d 76, 78 (1st Cir. 1982) (same); Rule 19 Advisory Committee Notes on 1966 Amend. ("[t]he interests that are being furthered [by Rule 19(a)(1)] are not only those of the parties, but also that of the public in avoiding repeated lawsuits on the same essential subject matter").

Notwithstanding these precedents, the Ninth Circuit's decision assiduously avoids finding the absent tribes to be required parties through its conclusion that even though the State and the Commission might be subject to inconsistent determinations regarding the number of slot machine licenses authorized by the Compacts, the absent tribes are not required parties because the Ninth Circuit could resolve any such inconsistencies on appeal. (App. D, *infra,* at 50 n.12.) This conclusion, unsupported by any precedent, is inconsistent with *Republic of the Philippines v. Pimentel,* 128 S. Ct. at 2193, where this Court held that it "would not further the public interest in settling . . . dispute[s] as a whole because [the absent parties] would not be bound by . . . [a] judgment in an action where they were not parties."

The Ninth Circuit's decision, therefore, rests on two erroneous presumptions. First, it assumes that an appellate court could bind absent tribal signatories to the Compacts to a judgment. Second, it speculates that all claims for relief regarding the maximum number of slot machine licenses authorized by the Compacts whenever and wherever they are brought either will be appealed in a manner that allows all such appeals to be considered at the same time, or that an appellate court will follow prior decisions on the same question regarding later appeals.

While, in this case, the Ninth Circuit easily conformed the appellate results of three trial court decisions, one of which was not argued on the merits, there is no guarantee of such a result in the future.

Thus, the possibility of inconsistent appellate decisions on the same claim for relief exists in cases which do not fortuitously come before the same appellate court on the same issue, in time to permit simultaneous confirmation of conflicting or inconsistent judgments below. Essentially, the Ninth Circuit rewrote Rule 19 in a manner that renders the federal judiciary reactive, rather than proactive, in the administration of justice, and removes all efficiencies intended by the rule.

Further, if a subsequent appellate panel were to consider itself bound by a prior appellate decision on the same claim, irrespective of the merit of arguments advanced in favor of a different conclusion, litigants would be deprived of due process. If future litigants perceived the possibility of such an outcome, individuals and entities that otherwise would be immune from suit or otherwise not subject to joinder could be forced to waive their immunity to protect their interests.

CONCLUSION

For the foregoing reasons, petitioners respectfully request that this petition be held pending this Court's disposition of the petition for writ of certiorari pending in *State of California, et al. v. Cachil Dehe Band of Wintun Indians of the Colusa Indian Community,* No. 08-931, and, if that petition is granted, grant and hold this petition pending the Court's disposition of that case.

Dated: March 25, 2009
Respectfully submitted

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APPENDIX – A

APPENDIX A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SAN PASQUAL BAND OF MISSION INDIANS, A Federally recognized Indian Tribe, Plaintiff-Appellant, v. STATE OF CALIFORNIA; CALIFORNIA GAMBLING CONTROL COMMISSION, an agency of the State of California; ARNOLD SCHWARZENEGGER, as Governor of the State of California, Defendants-Appellees.	No. 07-55536 D.C. No. CV-06-00988-LAB MEMORANDUM* (Filed Oct. 6, 2008)

Appeal from the United States District Court
for the Southern District of California
Larry A. Burns, District Judge, Presiding

Submitted August 8, 2008**
Pasadena, California

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*This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: CANBY, BYBEE, and M. SMITH, Circuit Judges.

The San Pasqual Band of Mission Indians ("San Pasqual") brought this action against the State of California, the California Gambling control Commission and the governor of California (collectively, "the State"). The complaint sought a declaratory judgment regarding the aggregate maximum number of slot machine licenses available to Indian tribes in California who were parties to approximately sixty essentially identical Indian Gaming compacts between those tribes and the State. The district court dismissed San Pasqual's action for failure to join all other tribes with similar compacts, who were subject to the same licensing pool, as required parties under Federal Rule of Civil Procedure 19, San Pasqual brings this appeal to challenge that dismissal, We have jurisdiction pursuant to 28 U.S.C. §1291, and we reverse.

We review for abuse of discretion a dismissal under rule 19 for failure to join a required party. *See Dawavendewa v. Salt River Project*, 276 F.3d. 1150, 154 (9th Cir. 2002). De novo review may therefore extend to determinations whether a third party's interests would be impaired within the meaning of the joinder rules, if that determination decided a question of law. *Am. Greyhound Racing, Inc. v. Hull,* 305 F.3d 1015, 1022 (9th Cir. 2002).

San Pasqual's declaratory judgment claim challenging the State's calculation of the maximum number of licenses in the 1999 Compact pool presents an issue identical to one addressed in *Cachil Dehe Band of Wintun Indians v. California*, 536 F.3d 1034 (9th Cir. 2008). In *Cachil Dehe Band*, we held that an Indian tribe that is party to a 1999 Compact with California may proceed to litigate the size of the total license pool without joining other compacting tribes, because those tribes have no protectable interest in the size of the license pool that qualifies them as required parties within the meaning of Rule 19(a). That ruling controls the present appeal of San Pasqual's declaratory judgment claim. Accordingly, we reverse the decision of the district court and remand this claim for further appropriate proceedings.

REVERSED AND REMANDED.

APPENDIX – B

APPENDIX B

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SAN PASQUAL BAND OF MISSION INDIANS, a Federally Recognized Indian Tribe, *Plaintiff - Appellant,* v. STATE OF CALIFORNIA; CALIFORNIA GAMBLING CONTROL COMMISSION, an Agency of the State of California; ARNOLD SCHWAR-ZENEGGER, as Governor of the State of California, *Defendants - Appellees.*	NO. 07-55536 D.C. NO. CV-06-00988-LAB ORDER (Filed Dec. 29, 2008)

Before: CANBY, BYBEE, and M. SMITH, Circuit Judges.

The panel has unanimously voted to deny the petition for panel rehearing. Judges Bybee and Smith have voted to deny the petition for rehearing en banc, and Judge Canby has so recommended.

The petition for en banc rehearing has been circulated to the full court, and no judge of the court has requested a vote on the petition for rehearing en banc. Fed. R. App. P. 35(b).

The petition for panel rehearing and the petition for rehearing en bane are DENIED.

APPENDIX – C

APPENDIX C

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SAN PASQUAL BAND OF MISSION INDIANS, a Federally Recognized Indian Tribe, Plaintiff, v. STATE OF CALIFORNIA, CALIFORNIA GAMBLING CONTROL COMMISSION, an Agency of the State for California, and ARNOLD SCHWARZENEGGER, as Governor of the State of California, Defendants.	CASE NO. 06-cv-00988-LAB (AJB) **ORDER GRANTING MOTION TO DISMISS SECOND AMENDED COMPLAINT** [Dkt No. 13] (Filed Mar. 20, 2007)

Plaintiff the San Pasqual Band of Mission Indians ("San Pasqual"), a federally recognized Indian Tribe, seeks declaratory relief in this action against the State of California, the California Gaming Control Commission ("Commission"), and Governor Arnold Schwarzenegger (collectively "Defendants" or "State") related to its 1999 Tribal-State Compact, under the Indian Gaming Regulatory Act of 1988 ("IGRA"), 25 U.S.C. §§ 2701, *et seq.* This matter is before the court on the State's Motion To Dismiss Second Amended Complaint ("Motion") pursuant to FED. R. CIV. P. ("Rules") 12(b)(7), (19). San Pasqual filed Opposition, and Defendants filed a Reply. In addition, the court accepted briefs from two *amicus curiae*: the California Nations Indian Gaming

Association ("CNIGA") opposing Defendants' Motion; and the California Tribal Business Alliance and the Rumsey Band of Wintun Indians (collectively "Rumsey") in support of the Motion.

On February 26, 2007, the court convened the Motion hearing. Stephen Solomon, Esq. appeared for San Pasqual. Randall A. Pinal, Esq. appeared for Defendants. Frank Lawrence, Esq., appeared for *amicus curiae* CNIGA. Fred J. Hiestand, Esq. appeared for *amicus curiae* Rumsey. Attorneys R. Bruce Evans, Esq., Peter Kaufman, Esq., and Ryan Kroll, Esq. also appeared. For the reasons recited on the record and as discussed below, the Motion is GRANTED.

I. BACKGROUND

The State entered individual Compacts with approximately 60 Indian tribes in September 1999. The Compacts authorize the participating tribes to own and operate Indian Gaming facilities on their Reservations. As pertinent here, the Compacts regulate Class III Gaming Devices (slot machines) and incorporate a formula for calculating the aggregate maximum number of licenses available to all Class III gaming tribes statewide, with an individual tribal limit of 2,000 each. San Pasqual alleges the State denied its application for additional licenses within its individual limit on grounds no more were available. In this action, San Pasqual alleges the State's calculation of the total aggregate number of licenses under the Compact formula is too low. The tribe seeks a judicial determination of the question: what is the correct number of Class III Gaming Device licenses authorized in the aggregate by the State Aggregate Limit formula contained in San Pasqual's Tribal-State Gaming Compact?

Defendants contend the Second Amended Complaint ("SAC") must be dismissed on grounds San Pasqual failed to join all 61 other tribes who executed 1999 Compacts materially identical to San

Pasqual's. They assert those absent parties are necessary and indispensable to this action because San Pasqual challenges the State's interpretation and application of a formula common to all those Gaming Tribes who obtain Class III device licenses under the 1999 Compacts. They argue each individual Compact tribe has a beneficial interest in any judicial construction of the aggregate limit provision and a legally protected stake in this litigation that would be impaired by a favorable judgment for San Pasqual. They also argue disposition of this action in the absence of the other Compact tribes would subject the State to inconsistent obligations. However, the absent tribes cannot be joined because they enjoy tribal sovereign immunity from suit, and Defendants argue neither the State nor San Pasqual can adequately represent all tribal interests. The narrow issue presented here is whether Rule 19, addressing the joinder of parties indispensable for just adjudication, requires dismissal of this action.

II. DISCUSSION

A. Indian Gaming Regulatory Act ("IGRA")

Congress enacted IGRA, 25 U.S.C. § 2701, *et seq.*, in 1988 to provide a statutory basis for the operation of gaming by Indian tribes as a means "to promote tribal economic development, tribal self sufficiency, and strong tribal government." 25 U.S.C. § 2701(4). The statute grants states a role in the regulation of Indian gaming. *Artichoke Joe's v. Norton*, 353 F.3d 712, 715 (9th Cir. 2003). IGRA makes Class III gaming activities lawful on Indian lands if (among other things), the activities are, "located in a State that permits such gaming for any purpose by any person, organization, or entity" and are "conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State under paragraph (3) that is in effect." 25 U.S.C. §§ 2710(d)(I)(B),(C). After a tribe and the Governor

negotiate a compact in California, the Legislature must ratify it.[1] Cal. Const. art. IV, § 19(f); 25 U.S.C. § 2710(d)(8). The Secretary of the Interior then "is authorized to approve any Tribal-State compact entered into between an Indian tribe and a State governing gaming on Indian lands of such Indian tribe," and may disapprove a Tribal-State compact "only if such compact violates -- (i) any provision of this chapter, (ii) any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands, or (iii) the trust obligations of the United States to Indians." 25 U.S.C. § 2710(d)(8)(A),(B). The tribal-State compact becomes effective when the Secretary approves it.

B. The 1999 Compacts

As traced in Defendants' Motion, the State and 57 federally-recognized California Indian tribes (including San Pasqual) executed nearly identical Compacts on September 10, 1999, to enable each of those tribes to conduct Class III gaming on Indian lands as defined by IGRA. Ultimately 62 tribes separately signed the 1999 Compact. The Legislature ratified the 1999 Compacts, and the Secretary approved them by publication in the Federal Register on May 16, 2000.

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[1] "(3)(A) Any Indian tribe having jurisdiction over the Indian lands upon which a class III gaming activity is being conducted, or is to be conducted, shall request the State in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities. Upon receiving such a request, the State shall negotiate with the Indian tribe in good faith to enter into such a compact. [¶] (B) Any State and any Indian tribe may enter into a Tribal-State compact governing gaming activities on the Indian lands of the Indian tribe, but such compact shall take effect only when notice of approval by the Secretary of such compact has been published by the Secretary in the Federal Register." 25 U.S.C. § 2710(d)(3)(A),(B).

The 1999 Compacts "are identical in most respects." *Artichoke Joe's v. Norton*, 216 F.Supp.2d 1084, 1094 (E.D. Cal. 2002), *aff'd* 353 F.3d 712 (9th Cir. 2003). The Compacts specify that each tribe may operate up to 2,000 Gaming Devices and establish a statewide maximum number of Gaming Devices that all 1999 Compact Tribes may license in the aggregate. Compact § 4.3.2.2(a) (San Pasqual Compact, Exh. A to Defendants' Request For Judicial Notice ("Compact")). Gaming Device licenses are distributed among all Compact Tribes pursuant to a license draw process described in the Compact, with licenses awarded based on a tribe's placement in a series of priority tiers established by, among other criteria, the number of Gaming Devices operated by the tribe. Compact § 4.3.2.2(a)(3); *see* SAC ¶ 18.

C. The Dispute

The provisions relating to the allocation of Class III Gaming Device licenses, including the formula for calculating the statewide aggregate cap, is common to all the 1999 Compacts. The Compact also provides that each individual tribe may operate no more than 2,000 slot machines. San Pasqual currently operates fewer than 2,000 slot machines and, prior to filing its lawsuit, it "requested Gaming Device licenses from the State through the draw process, but was informed by the State that there are no more Gaming Device licenses available," so "was denied its requested Gaming Device licenses." SAC § 24.

San Pasqual alleges the State's June 2002 interpretation of Compact § 4.3.2.2(a)(1) constituted a breach of the Compact in that its calculation of the aggregate limit is too low. The tribe alleges the State unilaterally and erroneously determined only 32,151 Gaming Device licenses are available statewide, whereas previously the State had stated the aggregate limit was considerably higher. SAC ¶ 23. It is San Pasqual's position "that under § 4.3.2.2(a)(1) of the Compact, the State Aggregate Limit authorizes

at least 42,700 Gaming Device licenses, and the Defendants, through their erroneous interpretation, have breached the Compact by refusing to make all Gaming Device licenses authorized by the Compact available through the Gaming Device license draw process." SAC ¶ 25 (emphasis added); *see* SAC ¶ 26 (San Pasqual argues "the Compact authorizes the issuance of at least 42,700 ***additional*** Gaming Device licenses through the Gaming Device license draw process") (emphasis added). San Pasqual seeks "a judicial determination as to the correct number of Gaming Device licenses authorized in the aggregate by the State Aggregate Limit formula contained in its Tribal-State Gaming Compact between San Pasqual and the State." SAC 8:4-6.3.

> a. Section 2.6 of the Compact defines the term "Gaming Device" to mean a slot machine.
>
> b. Section 4.3.1 of the Compact authorizes the San Pasqual to operate either: a) the number of Gaming Devices operated by San Pasqual on September 1, 1999; or b) 350 Gaming Devices, whichever is larger. Under § 4.3.1.(b), San Pasqual is authorized to operate and does operated 350 Gaming Devices as a matter of right.
>
> c. Section 4.3.2.2 of the Compact provides that San Pasqual may acquire Gaming Device licenses to operate Gaming Devices in excess of 350. For each Gaming Device license obtained, San Pasqual must pay the applicable fees to be deposited in the Revenue Sharing Trust Fund.[2]

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[2] The Revenue Sharing Trust Fund ("RSTF"), defined in Compact Section 4.3.2(a)(ii), is funded by the fees paid for Gaming Device licenses. The RSTF funds are distributed to those tribes in California who operate fewer than 350 Gaming Devices.

d. The number of Gaming Device licenses San Pasqual may obtain is limited by the State Aggregate Limit, contained in § 4.3.2.2(a)(1) of the Compact, on the number of Gaming Devices that all tribes in the aggregate may license and the 2,000 per-tribe Gaming Device limit contained in § 4.3.2.2.(a).

e. Section 4.3.2.2(a)(l) of the Compact caps the State Aggregate Limit of licenses as follows:

"The maximum number of machines that all Compact Tribes in the aggregate may license pursuant to this Section shall be a sum equal to 350 multiplied by the number of Non-Compact tribes as of September 1, 1999, plus the difference between 350 and the lesser number authorized under Section 4.3.1."[3]

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[3] Section 4.3.1 provides: "The Tribe may operate no more Gaming Devices than the larger of the following: (a) A number of terminals equal to the number of Gaming Devices operated by the Tribe on September 1, 1999; or (b) Three hundred fifty (350) Gaming Devices." Section 4.3.2.2(a)(1), (2) provides: "The Tribe, along with all other Compact Tribes, may acquire licenses to use Gaining Devices in excess of the number they are authorized to use under Sec. 4.3.1, but in no event may the Tribe operate more than 2,000 Gaming Devices, on the following terms, conditions, and priorities: (1) The maximum number of machines that all Compact Tribes in the aggregate may license pursuant to this Section shall be a sum equal to 350 multiplied by the number of Non-Compact tribes as of September 1,1999, plus the difference between 350 and the lesser number authorized under Section 4.3.1; (2) The Tribe may acquire and maintain a license to operate a Gaming Device by paying into the Revenue Sharing Trust Fund, on a quarterly basis, in the following amounts [followed by chart of four escalating annual fee-per-device categories by range of numbers of licensed devices."

(continued...)

> f. Currently, San Pasqual is authorized to operate 1,572 Gaming Devices.

SAC ¶ 16 (emphasis added); *see* Compl. Exh. A.

San Pasqual alleges the State has "issued several different and wildly conflicting conclusions that the 1999 Model Compacts, including San Pasqual's Compact, authorize as many as 60,000 Gaming Device licenses to be dispersed through the Gaming Device license draw process," whereas in or around June 2002, Defendants allegedly "breached" the Compact by "unilaterally and erroneously determin[ing] that the State Aggregate Limit stated in § 4.3.2.2(a)(1) of the Compact authorizes a Statewide Aggregate Limit of only 32,151 Gaming Device licenses," a figure it continues to enforce. SAC ¶¶ 22-23. San Pasqual does not allege a breach of contract cause of action.[4] Rather, the tribe uses its breach allegations as a "backdrop" to illustrate "the State's wildly inconsistent determinations and ultimate refusal to make available all Gaming Device licenses authorized by the Compact," purportedly warranting judicial "determination of the number of Gaming Device licenses authorized in the aggregate

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[4] The SAC alleges one claim for relief: "[r]bequest for judicial determination as to the correct number of Gaming Device licenses authorized in the aggregate by the State Aggregate Limit formula contained in its Tribal-State Gaming Compact between San Pasqual and the State." SAC 8:4-6. The prayer for relief states: "That the Court declare that the Compact authorizes the issuance in the aggregate of at least 42,700 Gaming Device licenses through the Gaming Device license draw process; and not 32,151 Gaming Device licenses as Defendants erroneously contend." SAC 10:3-5.

by the Compact between the State and San Pasqual." SAC ¶ 24.

San Pasqual relies on its own calculation of a higher aggregate number of licenses, applying the 1999 Compact formula. San Pasqual wants the court to declare "the State Aggregate Limit authorizes at least 42,700 Gaming Device licenses" (SAC ¶ 25) are available through the draw process, rather than the State's lower calculation in order to force the State to revisit its decision to deny San Pasqual's request for additional Gaming Device licenses on the stated ground "there are no more/'18 Gaming Device licenses available" (SAC ¶ 24), asking the court to construe Compact § 4.3.2.2(a)(l) without San Pasqual having to renegotiate its Compact.

The Compact describes the method by which the parties can modify or amend the terms and conditions of the Gaming Compact at any time. Compact § 12.1. It is undisputed that in June 2004, seven 1999 Compact tribes (including Rumsey) and the State renegotiated their Compacts. [5] Those modified Compacts incorporated "new rights and responsibilities for the parties (e.g., the State permits the tribe to operate additional Gaming Devices in exchange for, among other things, revenue payments to the State General Fund, and more comprehensive environmental and patron protection provisions)." Mot. 5:1-6.

San Pasqual attempts to characterize its action as limited to a construction solely of its own Compact with the State. Defendants move to dismiss this suit on grounds San Pasqual "challenges the State's interpretation and application of Compact provisions

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[5] The State represents the Governor also negotiated Compact amendments with six other tribes in 2006, although not all those have been ratified by the Legislature and none has yet been approved by the Secretary. *See* Mot. fn. 4, fn. 5.

specifying the aggregate limit, without having joined the other tribes beneficially interested in this action's outcome." Mot. 1:13-15. The narrow issue the court decides here is whether this litigation can continue on the merits in the absence of all Indian Tribes who participate in the license draw process under their own Compacts with the State. Although understandings of the 1999 Compact, the process for awarding the Gaming Device licenses up to the aggregate limit, and the expectations of tribes who renegotiated their Compacts are necessary to perform the Rule analysis, the court does not reach the merits of San Pasqual's requested declaratory relief.

D. Legal Standards

If a necessary and indispensable party cannot be joined in an action, the case must be dismissed. The moving party has the burden of persuasion in arguing for dismissal. *Makah Indian Tribe v. Verity,* 910 F.2d 555, 558 (9th Cir. 1990). The court first determines whether the absent party is "necessary" to the suit. If an absent party necessary to the suit cannot be joined, the court must then determine whether the absent party is "indispensable" so that in "equity and good conscience" the suit should be dismissed. Rule 19(a), (b). Rule 19(a) provides, in pertinent part (emphasis added):

> A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii)

> leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. . . .

To satisfy Rule 19, only one of the two prongs defining necessary parties need be shown. *Shimkus v. Gersten Cos.*, 816 F.2d 1318, 1322 (9th Cir. 1987). In deciding whether the absent party is "necessary" under Rule 19(a)(l), the court "must decide if *complete relief* is possible among those already parties to the suit," an analysis independent of the question whether relief is available to the absent party. *Makah,* 910 F.2d at 558. Under Rule 19(a)(2), the court determines "whether the absent party has a *legally protected interest* in the suit," a showing that must be more than a financial stake. *Id.* "A fixed fund which a court is asked to allocate may create a protectable interest in beneficiaries of the fund." *Id., citing Witchita and Affiliated Tribes of Oklahoma v. Hodel,* 788 F.2d 765, 774 (D.C. Cir. 1986); *see American Greyhound Racing, Inc. v. Hull,* 305 F.3d 1015, 1023 (9th Cir. 2002), (interests arising from terms in bargained contracts are also legally protectable).

"If a legally protected interest exists, the court must further determine whether that interest will be *impaired or impeded* by the suit." *Id.* If no party in the suit adequately represents the absent party's interest, then an identified impairment is not to be minimized. *Cf Witchita,* 788 F.3d at 774-75 (observing the United States may adequately represent an Indian tribe unless there is a conflict between the United States and the tribe).[6] The court

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[6]States do not have the same fiduciary relationship to Indian Tribes as does the federal government. *American Greyhound Racing,* 305 F.3d at 1023 n. 5 ("the State and tribes have often been adversaries in disputes over gaming, and the State owes no trust duty to the tribes").

(continued...)

must also consider "whether *risk of inconsistent rulings* will affect the parties present in the suit." *Makah*, 910 F.2d at 558-59; *see Witchita*, 788 F.3d at 774 (allocation of a limited fund to which absent parties are entitled may create such a risk).

"Only if the absent parties are 'necessary' and cannot be joined must the court determine whether in 'equity and good conscience' the case should be dismissed under FED.R.CIV.P. 19(b)." *Makah*, 910 F.2d at 559. That analysis, in consideration of the substantive claims, proceeds through a four-part inquiry. "First, *prejudice* to any party resulting from a judgment militates toward dismissal of the suit." *Id.* at 560, *citing Witchita*, 788 F.2d at 775. "Second, *shaping of relief* to lessen prejudice may weigh against dismissal." *Id., citing Provident Tradesmens Bank & Trust Co. v. Patterson*, 390 22 U.S. 102, 111-112 (1968). "Third, if an *adequate remedy,* even if not complete, can be awarded without the absent party, the suit may go forward." *Id., citing Witchita*, 788 F.2d at 777. "Finally, if no *alternative forum* is available to the plaintiff, the court should be 'extra cautious' before dismissing the suit." *Id.*

E. Evidentiary Objections

San Pasqual objects Defendants lack evidence to support their assertion that "if San Pascal succeeds in this action, some 1999 Compact Tribes will necessarily suffer prejudice in the form of a resulting decrease in market share or diluted license value." The court does not need to rely on the "market share" theory to find the prejudice element of the indispensable party analysis is satisfied. Moreover, any deficiency in the moving papers regarding the prejudice demonstration was cured by the Rumsey *amicus curiae* brief. Similarly, the Rose Declaration San Pasqual provided to challenge a dilution of

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(...continued)

market share argument, purporting to be expert opinion 'on the issue of whether the gaming device market in California could support a substantial increase in number of licenses of the magnitude San Pasqual seeks to have this court declare, is immaterial to the result of the Rule 19 analysis, as the court has determined it cannot adjudicate the merits of the aggregate limit on gaming device licenses in the absence of indispensable parties who cannot be joined in this action. The objection is OVERRULED.

Defendants' evidentiary objections and Motion To Strike the three Declarations/Affidavits San Pascal provided in support of its Opposition are SUSTAINED. The issues presented by the Motion do not involve the merits of San Pasqual's substantive claim for relief. The specific foundation and hearsay objections to particular portions of the Declaration contents are also sustained.

F. Arguments Presented

San Pasqual disputes that any other Indian tribe is necessary or indispensable to this case because it purportedly seeks only a judicial determination of its own rights under its own bi-lateral Compact with the State, and argues the action implicates only prospective relief, so that no other tribe has a legally protected interest that will be impaired by this case going forward. San Pasqual argues it seeks no allocation or reallocation of any gaming device licenses to itself or to any other tribe as relief in this suit, and it does not challenge the State's administration of the license draw process, other than to dispute an allegedly "erroneous" determination of the maximum number of gaming device licenses authorized under the Compact's State Aggregate Limit formula. Opp. 3:22-25; *see* SAC ¶ 8. On those bases, San Pasqual attempts to distinguish Defendant's legal authority and argues: "San Pasqual's requested relief would only add additional Gaming Device licenses to the statewide licensing

pool, and participation in future license draws (and payment of license fees) is purely voluntary." Opp. 12:6-11.

San Pasqual also purports to distinguish its request for "only a prospective judicial determination of its compact rights" from the "previous litigation brought by various tribes concerning a tribal-state gaming compact with the state" in the *Rincon* and *Colusa* cases. The State requests judicial notice of those two opinions: *Rincon Band of Luiseno Mission Indians v. Governor and Attorney General of California*, 04cv1151-W(WMc), Dkt No. 36 (decided March 22, 2005, granting defendants' motion to dismiss for failure to join a necessary and indispensable party); and *Cachil Dehe Band of Winton Indians of the Colusa Indian Community v. State of California, California Gambling Control Commission, and Governor,* 2006 WL 1328267 (E.D. Cal. May 16, 2006) ("Colusa"). As pertinent here, each of those rulings involved Rule 19 indispensable party analysis associated with matters where a single 1999 Compact tribe sought, in the absence of other Gaming Tribes, a judicial declaration that the State erred in calculating the Compact's aggregate Gaming Device license limit, and that a far greater number should be made available.

The *Rincon* case involved a plaintiff tribe seeking "a declaratory judgment stating the correct number of gaming device licenses available *under the* 1999 *Compacts.*" Opp. 18:11-14. In purported contrast, San Pasqual represents it "explicitly limited the breadth of its Complaint to 'a judicial determination as to the correct number of Gaming Device licenses authorized by the State Aggregate Limit formula contained in its Tribal-State Gaming Compact between San Pasqual and the State.'" Opp. 18:16-20, quoting SAC ¶ 8. The relief San Pasqual requests is that the court declare the maximum number of Gaming Device licenses the State may issue statewide in the aggregate. San Pasqual does not adequately explain how any judicial

determination that a larger pool of licenses must be made available than is recognized by the State, against which the State will be asked to apply the formula for San Pasqual's requested additional licenses, can avoid affecting all the other 1999 Compact calculations of the "correct number of Gaming Device licenses authorized by the State Aggregate Limit formula" for any single tribe. San Pascal's characterization of its own action as "explicitly limited" in breadth" to "a judicial determination as to the correct number of Gaming Device licenses authorized by the State Aggregate Limit formula contained in its Tribal-State Gaming Compact between San Pascal and the State," purportedly rendering *Rincon* "inapplicable to the instant matter" is unpersuasive. Opp. 18:11-21. The formula in San Pasqual's 1999 Compact it asks the court to construe is the same for all the other Class III Gaming Tribes operating under 1999 Compacts. Accordingly, any judicial declaration that San Pasqual's calculation is correct and the State's is wrong would necessarily affect every tribe's decisions made in reliance on the maximum aggregate number of licenses available State-wide to the 1999 Compact tribes.

In *Colusa* (as pertinent here), the tribe challenged the Commission's interpretation of the authorized number of Gaming Device licenses. As in *Rincon*, the *Colusa* court found the 1999 Compact Tribes were necessary and indispensable parties whose joinder was not possible due to the sovereign immunity of Indian tribes, and dismissed the claim analogous to the declaratory relief San Pasqual unilaterally seeks here. The declaratory relief portion of the *Colusa* case addressing the aggregate limit formula is indistinguishable from this case: "At issue in plaintiffs first and second claims for relief is the validity of the State and CGCC's interpretation of the clauses set forth in § 4.3.2.2 of the Compact, addressing participation in Gaming Device license draws and the authorized number of Gaming Device licenses." *Colusa*, 2006 WL 1328267 at * 4 (emphasis

added). Like the Colusa tribe, San Pascal seeks a judicial determination of the validity of the State's interpretation of Compact § 4.3.2.2 setting the maximum number of authorized Gaming Device licenses.

The court concurs with Defendants: "Except for different calculations, San Pasqual's claim is identical to those rejected [as not justifiable in the absence of the other 1999 Compact Tribes] by the courts in *Rincon* and *Colusa*." Reply 9:1-3. The State argues "[a]ll 1999 Compact-signatory Tribes are necessary and indispensable parties to this action." Mot. 14:6. Although not binding on this court, the *Rincon* and *Colusa* decisions apply the Rule 19 analysis to the same problem as is presented here and are persuasive. As a practical matter, the aggregate number of Gaming Devices under the formula in San Pasqual's Compact cannot be different from the aggregate number of Gaming Devices under the same formula in every other 1999 Compact.

G. Necessary Parties Cannot Be Joined In This Action

San Pasqual's suggestion of unanimous tribal support for its position in this litigation does not survive the demonstration by five tribes claiming a protected interest through the Rumsey *amicus* brief. Reply 6:24-26. The Rumsey *amici* argue at least those tribes who renegotiated their 1999 Compacts with the State in 2004 are necessary and indispensable parties because the renegotiations were conducted in reliance on the State's 2002 declared maximum aggregate limit on licenses available under the 1999 Compacts. The renegotiating tribes agreed to increased responsibilities in exchange for more licenses in consideration of and reliance on the statewide maximum applicable to the 1999 Compact tribes.

1. **Complete Relief**

Each 1999 Compact contains the same formula for establishing the maximum number of Gaming Device licenses available there under, and the language of the provision encompasses all the 1999 Compact Tribes: "The maximum number of machines that *all Compact tribes in the aggregate* may license pursuant to this Section shall be. . . ." Compact §4.3.2.2(a)(1) (emphasis added). On that basis, the State argues: "The parties' rights and responsibilities under this term are not several or distinct, and neither the State nor any signatory tribe is exempt or can opt out from this provision," so that "it is not possible to have more than one determination of the Compact's aggregate Gaming Device license limit without breaching the Compact." Def.'s Reply to CNIGA Brief 4:11-14. In the absence of all 1999 Compact tribes, the State argues "complete relief cannot be accorded among those already parties." Rule 19(a)(1).

The State would be bound by a favorable decision for San Pasqual altering the total aggregate limit of all Class III gaming device licenses, creating potential collateral estoppel consequences in future actions. "[T]he State bargained with all [1999] Compact tribes, individually and collectively, for a limitation on the total number of Gaming Device licenses," so that "the State is entitled to have a judgment that includes all Compact tribes." Reply 6:17-23; *see* Def.'s Reply To CNIGA Brief 2:11-21. The court finds "complete relief' is not available in the absence of, at a minimum, the 1999 Compact tribes, irrespective of San Pasqual's argument it seeks only a determination peculiar to its own "bi-lateral compact," because there can be but one total aggregate number.

In addition, Defendants would be exposed to inconsistent obligations were San Pasqual granted the requested relief ostensibly to itself alone. In belaboring the difference between "inconsistent adjudications" and "inconsistent obligations," San Pasqual argues "district courts have previously

misapplied the 'inconsistent obligation' standard in those cases relied on by the State." Opp. 13:7-14:3. However, San Pasqual's argument *Colusa*, for example, "wrongly applied the 'inconsistent adjudication' standard instead of the correct 'inconsistent obligations' standard as required by Rule 19" is unpersuasive, because irrespective of the label that court used, its holding clearly describes the risk of inconsistent obligations. San Pasqual argues the various tribal-state gaming compacts are "separate bilateral agreements," so that "the understanding, expectation, and intent of the individual parties may be very different -- even though the language may be nearly identical to other tribal-state gaming compacts." Opp. 13:19-23. Even though performance details in the individual bilateral agreements may vary from compact to compact, the import of San Pasqual's request that the court calculate and declare a particular aggregate number of Gaming Device licenses under the 1999 Compacts using the uniform formula common to all cannot be adjudicated as the "bilateral" and "independent" construction urged by San Pasqual, but rather would expose the State to inconsistent obligations should other tribes seek and obtain a different aggregate number ruling. Opp. 13:19-23.

2. <u>Absent Parties Have Legally Protected Interests In The Suit That Would Be Impaired Absent Joinder</u>

Defendants argue: "The number of Gaming Device licenses is a single, fixed amount uniformly applicable to all Compact tribes, giving each an interest in any action challenging the existing interpretation of that amount." Reply 1:2-9. San Pasqual does not dispute the "Compact provision establishing the formula for determining the statewide limit is a uniform and material term in every compact." Reply 1:21-23. While "Compacts are nominally bilateral," certain material provisions "including the formula for determining the

aggregated Gaming Device license limit, are equally binding on the State and on all signatory tribes." Reply 2:3-5.

> Each Compact is one of sixty-two virtually identical, mutually interdependent Compacts that represent an integrated agreement amongst the State and all signatory tribes on the scope and regulation of class III tribal gaming in California. The uniform term establishing the maximum number of Gaming Device licenses available statewide under the 1999 Compact appears in all 1999 Compacts. **Indeed, that term's plain language expressly requires inclusion of all Compact tribes in determining the total number of available licenses:** "The maximum number of machines that *all Compact tribes in the aggregate* may license pursuant to this Section shall be . . . ." (Compact, § 4.3 .2.2(a)(1) (emphasis added). The parties' rights and responsibilities under this term are not several or distinct, and neither the State nor any signatory tribe is exempt or can opt out from this provision. Therefore, it is not possible to have more than one determination of the Compact's aggregate Gaming Device license limit, without breaching the Compact.

Reply 2:5-16 (emphasis added).

Defendants contend all Compact tribes have a legally protected interest in any judicial declaration of the total number of Gaming Device licenses authorized by the Compact, distinguishing that interest from a purely financial interest for purposes of satisfying Rule 19 criteria: lithe interest is the bargained-for, fixed fund that is the aggregate Gaming Device license pool." Reply 2:22-3: 1. *Makah,*

910 F.2d at 558 ("A fixed fund which a court is asked to allocate may create a protectable interest in beneficiaries of the fund"). "Interests arising from terms in bargained contracts are also legally protectable, so long as the relief sought would, if granted, render 'the compacts less valuable to the tribes' and thereby 'impair' tribal interests in them." Reply 3:5-8, *quoting American Greyhound Racing,* 305 F.3d at 1023.

> San Pasqual attempts to disguise this suit as a simple judicial determination of the correct number of aggregate Gaming Device licenses authorized by the Compact. In reality, however, the suit furthers San Pasqual's independent desire to immediately operate additional Gaming Devices. It also disregards the available and more appropriate Compact remedy of negotiating a new compact or an amendment to the Tribe's existing compact, similar to those negotiated by other tribes for additional Gaming Devices. Although San Pasqual asks this Court to order the State to make additional licenses available to all Compact Tribes, not all tribal interests are identical, nor can they be adequately represented by the parties to this action. At bottom, this case represents an attempt by a single Indian tribe to have this Court place that tribe's sovereign interests above the sovereign interests of the State and at least 61 other federally recognized tribes in California, without input from those other tribes. The law does not countenance such action.

Mot. 1:16-2:3.

San Pasqual argued no other tribe has claimed an interest in the outcome of this litigation, so the

court should not find any absent party is "necessary" to afford complete relief. Opp. 8:20-22. San Pasqual represents each signatory tribe to the 1999 Model Compact was provided written notice of this lawsuit seeking a judicial determination of the number of Gaming Device licenses authorized in the aggregate by its Compact with the State, and as of the time the Opposition was filed, it received no response from any tribe claiming an interest in the case. Opp. 9:12-16.

> In fact, because many other tribes recognize the importance of preserving the judicial remedy bargained for in the 1999 Model Compact, the only response by the other tribes has been to voice their support for the continuation of the case.[7] To wit,

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[7] San Pasqual also argues the Compact § 9.1(d) specifically permits that "claims of breach or violation of this Compact" may be "resolved in the United States District Court where the Tribe's Gaming Facility is located, so that the Compact "contains a waiver of both San Pasqual's and the State's sovereign immunity in the event that a dispute arises under the Compact." Opp. 20:1-9. It contends the State's Motion is an attempt "to fundamentally alter the intent of the parties, and prevent San Pasqual from seeking a judicial determination of a crucial and highly-debated provision of the Compact." Opp. 20:14-18. San Pasqual relies on *Cabazon Band of Mission Indians v. Wilson,* 124 F.3d 1050, 1056 (9th Cir. 1997) in support of its argument the State is attacking the judicial rights bargained for in its Compact with San Pasqual. However, San Pasqual's complaint does not seek breach of contract relief, but only declaratory relief as to a specific calculation of a finite number of Gaming Device licenses it argues the State has miscalculated. There is no issue, as in *Cabazon,* that the State is attempting "to defy or repudiate that very contract." Opp. 21:1-15, *quoting* Cabazon, 124 F.3d at 1056). In addition, the palpable tension between San Pasqual's attempt to keep its declaratory relief focus from drifting into a breach of contract action only transparently hides the impairing effect of the court's construction of a contract provision common to multiple contracts the State has entered with dozens of absent parties,

(continued...)

> the California Nations Indian Gaming Association, the umbrella organization for a majority of California's gaming and non gaming tribes, was authorized by a unanimous vote of its tribal members to seek leave to file an Amicus Curiae brief in support of San Pasqual's case going forward.

Opp. 9:18-10:1.

The CNIGA *amici* provide historical context for the IGRA and the role of Tribal-State Compacts in implementing federal Indian policy. They rely on canons of construction of agreements between the federal government and Indians based on that "unique trust relationship" favoring construction of such agreements "as the Indians understood them." CNIGA Brief p. 5. On that basis, those *amici* argue San Pasqual should be allowed "to reach the merits of its case." *Id.* 6:11-12. CNIGA represents its "68 member tribes voted ***unanimously*** to support to Pasqual's position in this case," and "[n]o tribe to CNIGA's knowledge has claimed a legally cognizable interest in San Pasqual's compact." *Id.* 7:2-6. CNIGA echos San Pasqual's argument that "Compacts are bilateral agreements between an individual tribe and an individual State, not multi-party agreements between all tribes and the State," so San Pasqual should be permitted "to enforce its compact terms." *Id.* 7:11-23. Nevertheless, CNIGA argues "all the 1999 do share an interest in preserving the dispute resolution provision of their individual compacts" it contends will be promoted if San Pasqual is permitted to proceed on its own. *Id.* 7:11-14.

The Rumsey *amici* dispel San Pasqual's and the CNIGA *amici's* suggestions all Gaming Tribes

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(...continued)
both on those parties and on the State.

universally support San Pasqual's unilateral pursuit of declaratory relief to increase the aggregate limitation on Gaming Devices contained in the common formula incorporated into each 1999 Compact. The Rumsey *amici* urge dismissal of this action on grounds at least those 1999 Compact Tribes who have since negotiated amendments to their Compacts with the state -- if not all the 1999 Compact Tribes as well -- are indispensable parties who are immune from suit and cannot be joined. Those *amici* explain Rumsey and certain other tribes renegotiated and amended their Gaming Compacts with the State in 2004, in reliance on the State's determination under the 1999 Compact formula an overall aggregate limit of 32,151 licenses were available to most of the Gaming Tribes, who continue to operate under the 1999 Compacts. They contend they relied on that figure for purposes, among others, of calculating how much each renegotiating tribe felt it was able and willing to pay the State for additional licenses. The State argues the other tribes' beneficial interest in the outcome of this litigation is not simply "market share."

> While some tribes have negotiated Compact amendments to increases market share, they have done so based upon the mutual understanding amongst all Compact parties that a finite number of licenses [is] available statewide under the 1999 Compact. . . . [T]he harm to interests of tribes with Compact amendments is very real, as is the harm to the State and all 1999 Compact tribes.

Reply 4:4-11.

The court finds the absent parties have a legally protected interest in the suit, under either a "fixed fund" theory or under the theory that interests arising from terms in bargained contracts are protected interests, inasmuch as a determination of the maximum number of licenses available collectively to all the 1999 Compact tribes is

uniformly applicable to all through a formula common to all those Compacts. The Rumsey *amicus* brief defeats any argument that San Pascal can represent the tribal interests of all the tribes who entered 1999 Compacts. Although the tribes who subsequently renegotiated their tribes may no longer be bound by the aggregate limit calculated under the 1999 Compact formula, they relied on the aggregate limit figure applicable to the 1999 Compacts to make their decisions about the number of additional licenses they would pursue and the consideration they were willing to pay to exceed those limitations. Permitting San Pasqual, or any other of Compact tribes, to unilaterally obtain a judgment declaring a different aggregate maximum number of licenses would impair or impede other tribes' bargains and material assumptions.

3. Necessary Parties Cannot Be Joined

The State takes issue with the CNIGA representation that the State can "adequately represent" the position of any 1999 Compact tribe that might share the State's view (CNIGA Brief 8:4-6), observing the Ninth Circuit "has unequivocally held that a governor of a state cannot adequately represent the interests of an absent compacting tribe, even though both the state and the tribe may wish to uphold the legality of a gaming compact." Def.'s Reply To CNIGA Brief 4:28-5:3, *citing American Greyhound Racing,* 305 F.3d at 1023 n.5 ("the State and tribes have often been adversaries in disputes over gaming, and the State owes no trust duty to the tribes"). The court finds the reasoning in *Rincon* and *Colusa* persuasive on both the necessary parties and the sovereign immunity questions. The court rejects CNIGA's suggestion the waiver of sovereign immunity in the 1999 Compacts at Section 9.4 would permit joinder of the other tribes in these circumstances. CNIGA Amicus Brief 11:17-23.

4. The Necessary Parties Are Indispensable

The court next decides whether the absent necessary parties are indispensable. San Pascal and CNIGA argue the court could limit the application of prospective, equitable relief to San Pascal, so no other tribes would be prejudiced. However, were San Pascal to prevail here, it would undoubtedly pursue additional Gaming Device licenses in reliance on the higher declared aggregate number available. At a minimum, those absent tribes with Compact amendments who relied on the fixed license pool remaining unchanged from the number calculated by the State in 2002 would be prejudiced, as discussed in the Rumsey *amicus* brief and above. The fixed nature of the license pool was a material term all parties to the 1999 Compacts bargained for, including those who subsequently negotiated amendments to their compacts with the State.

a. Prejudice

The court finds the prejudice prong of the Rule 19 dismissal analysis is satisfied. The State articulates the adverse effects on absent parties were the court to proceed with the declaratory relief San Pasqual seeks, in particular those tribes aligned with the Rumsey tribe:

> [San Pasqual's] narrow approach necessarily ignores the interests of 1999 Compact Tribes that have negotiated amendments that permit them to operate additional Gaming Devices in exchange for increased responsibilities. The amendments were based upon, *inter alia,* a mutual understanding between the State and each of those tribes regarding the Compact's aggregate Gaming Device limit. To permit San Pasqual to proceed with this action and possibly obtain the same benefit for itself without a corresponding increase

> in obligations would significantly prejudice those tribes' -- and the State's -- interest.

Mot. 12:14-20.

The State also articulates prejudice that would flow to the other 1999 Compact Tribes who, like San Pasqual, have not renegotiated their compacts if San Pasqual succeeds in this action.

> For example, the most obvious detriment would flow to tribes currently operating the 1999 Compact-maximum 2,000 Gaming Devices, as they are necessarily ineligible for additional licenses, and the tribes with low priority in the license draw process could receive no new licenses. These tribes would certainly be harmed if this Court determines – as San Pasqual requests -- at lest 10,549 more licenses are available to competing tribes.

Mot. 12:23-28.

b. <u>Shaping Of Relief</u>

The CNIGA *amicus curiae* brief argues the court has "better options available to it to address the issues the State raises," and should not use the "drastic measure" of a Rule 19 dismissal to address "the potential interests of those tribes," even were the court to find the absent tribes to be necessary parties. CNIGA Brief 2:3-9. CNIGA urges the court not to dismiss under Rule 19, but rather to shape "prospective equitable relief" in the form of an injunction to "provide plaintiff San Pascal with complete relief, with no need to extend statewide to all tribes." CNIGA 9:28-10:2. The expectation appears to be that if the court reached and granted the SAC declaration San Pascal seeks, then the State would have to revisit its denial of additional gaming licenses on grounds none remained available because the aggregate limit had been reached. The court fails

to appreciate how a uniform term in all the 1999 Compacts setting an aggregate limit affecting every 1999 Compact tribe can be separately adjudicated as to any individual tribe who challenges the State's number without circumventing the 1999 Compact bargain as well as the Compact terms relating to Compact amendments. The court finds no unique relief for San Pasqual can be shaped that would not materially impact the interests of all other Class III Gaming tribes. Moreover, the nature of the "injunction" CNIGA refers to is unclear. San Pasqual neither requests, nor would the court order in these circumstances, the State to issue the additional Class III Gaming Devices San Pasqual sought and was denied through the draw process.

c. No Adequate Remedy Without The Absent Parties

San Pasqual wants its calculation of the statewide aggregate limit substituted in place of the State's calculation. One obvious risk were the court to reach that question in the absence of all tribes on a theory of bilateral contract is that each tribe could independently propose a variant of that number and pursue inconsistent declarations of a term uniformly and contractually applicable to all. The remedy would also be "inadequate" here because San Pasqual assumes all tribes support increasing the ceiling of available licenses, whereas, at a minimum, the Rumsey *amici* relied on the State's lower figure in renegotiating their own Compacts. San Pasqual does not explain how, under its "bilateral contract" theory, any upward adjustment to the State's determination of the aggregate number of Gaming Device licenses for purposes of San Pasqual's application for more could be reconciled with any other tribe's bilateral contract claim for a judicial declaration of a different figure. The State would be in an untenable position *vis-a-vis* the implementation of a maximum number of licenses to award process through the draw process.

d. Alternative Forum

The "alternative forum" element also weighs for dismissal. CNIGA invokes "settled canons of federal Indian law" in support of San Pasqual's effort to save its SAC from dismissal that shed little light on the Rule 19 analysis. Both San Pascal and CNIGA argue dismissal would "nullify the express right of tribes to seek judicial remedies for state *breaches of compact* . .. " CNIGA Brief 8:10-11. However, San Pasqual is not pursuing a cause of action for breach of contract in this case. Defendants observe San Pasqual is free to request renegotiation of an amended Compact with the state as an alternative to this litigation attempting to force the issuance of additional licenses. Compact amendments were the contractually contemplated means to increase the number of licenses a tribe is authorized to pursue. Mot. 13:4-7. The CNIGA *amici* argument the State's suggestion is a "false remedy" because of "an alleged breach of the Tribe's existing compact" is unpersuasive. *Id.* 12:20-24. The absence of a judicial forum to achieve its goal does not prevent dismissal when the other Rule 19 elements are satisfied. *See, e.g. Quileute Indian Tribe v. Babbitt*, 18 F.3d 1456, 1460 (9th Cir. 1994) ("lack of an alternative forum does not automatically prevent dismissal of a suit"); *Dawavendewa v. Salt River Project Agric. Improv. and Power Dist.*, 276 F.3d 1150, 1162 (9th Cir. 2002) (listing cases); *Wilbur v. Locke*, 423 F.3d 1101, 1115 (9th Cir. 2005) (finding absent Indian tribe indispensable despite lack of an alternative forum); *Manybeads v. United States*, 209 F.3d 1164,1166 (9th Cir. 2000) (same).

H. The Case Must Be Dismissed "In Equity And Good Conscience"

In consideration of all the argument, evidence, and authority presented, the court finds this case must be dismissed for inability to join indispensable parties. The absence of all Tribes who have relied on the State's calculation of the total aggregate number

of Gaming Devices, under a formula common to every 1999 Compact, does not permit the court, in "equity and good conscious," to decide a single tribe's calculation of that aggregate total that conflicts with the State's operative figure. With respect to both the tribes claiming an interest in this action *(see* Rumsey *amicus curiae* brief) and with respect to all the 1999 Compact tribes, like San Pascal, which have not renegotiated their 1999 Compacts, the Rule 19 joinder criteria are satisfied, but each absent tribe cannot be joined due to their sovereign tribal immunity.

Tribes like Rumsey, who renegotiated their Compacts with the State in 2004 in reliance on the aggregate maximum number of licenses available to the remaining 1999 Compact tribes, "claim an interest relating to the subject of the action and [are] so situated that the disposition of the action may (i) as a practical matter impair or impede [their] ability to protect that interest. . . ." Rule 19(a). A legally protected interest is created by the term of the 1999 Compact setting the formula and the aggregate limit of Gaming Device licenses. In addition, to resolve a dispute over the State's interpretation of the maximum aggregate number of licenses without the participation of all 1999 Compact signatories risks impairing or impeding the absent tribes' interest. The formula is common to all the 1999 Compacts, and the State has declared and has enforced the finite number of licenses it calculates under that formula.

Moreover, despite San Pasqual's effort to characterize the relief it seeks as prospective, the State demonstrates the practical effect should San Pascal obtain the relief it seeks would be "purely substantive and retroactive." The tribe wants the court "to overturn the State's 2002 calculation of the aggregate Gaming Device license limit and increase that limit as it applies to San Pascal," not "injunctive relief requiring the State to follow a particular process in the future." Def.'s Reply To CNIGA Brief

6:12-17. "Indeed, San Pascal seeks no injunctive relief whatsoever." *Id.* 6:17-18.

III. CONCLUSION AND ORDER

For all the foregoing reasons, the court finds necessary parties indispensable to this litigation cannot be joined. Accordingly, **IT IS HEREBY ORDERED** Defendants' Rule 12(b)(7) and (19) Motion To Dismiss the Second Amended Complaint is **GRANTED** for failure to join necessary and indispensable parties. The Clerk of Court shall terminate this case in its entirety.

IT IS SO ORDERED.

DATED: March 20, 2007

/s/ Hon. Larry Alan Burns
HONORABLE LARRY ALAN BURNS
United States District Judge

APPENDIX – D

APPENDIX D

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CACHIL DEHE BAND OF WINTUN INDIANS OF THE COLUSA INDIAN COMMUNITY, a federally recognized Indian Tribe, *Plaintiff-Appellant,* v. STATE OF CALIFORNIA; CALIFORNIA GAMBLING CONTROL COMMISSION, an agency of the State of California; and ARNOLD SCHWARZENEGGER, Governor of the State of California, *Defendants-Appellees.*	No. 06-16145 D.C. No. CV-04-02265-FCD ORDER AMENDING OPINION AND DENYING THE PETITION FOR PANEL REHEARING AND PETITION FOR REHEARING EN BANC AND AMENDED OPINION

Appeal from the United States District Court for the Eastern District of California Frank C. Damrell, District Judge, Presiding

Argued and Submitted
April 9, 2008-Pasadena, California

Filed August 8, 2008
Amended October 24, 2008

Before: William C. Canby, Jr., Andrew J. Kleinfeld,

and Jay S. Bybee, Circuit Judges.

Opinion by Judge Canby

COUNSEL

George Forman, Forman & Associates, San Rafael, California, for the plaintiff-appellant.

Christine M. Murphy, Deputy Attorney General, Sacramento, California (briefs); Peter H. Kaufman, Deputy Attorney General, San Diego, California (oral argument); for the defendants-appellees.

ORDER

The opinion filed in this case on August 8, 2008; slip op. at 10159, to appear at 536 F.3d 1034 (9th Cir. 2008), is amended as follows:

At slip op. at 10166, first full paragraph, line 6: Insert "by the tribe on September 1, 1999," after "number of gaming devices operated."

At slip op. at 10169, lines 3-4: delete "for the issuance of up to 22,500 additional gaming device licenses" and substitute therefor: "for the operation of up to 22,500 additional gaming devices."

At slip op. 10174, lines 11-12: delete "for the issuance of up to 22,500 additional licenses" and substitute therefor: "for the operation of up to 22,500 additional gaming devices."

With these amendments, the panel has voted to deny the petition for panel rehearing. Judges Kleinfeld and Bybee have voted to deny the petition for rehearing en banc, and Judge Canby has so recommended.

The petition for en banc rehearing, together with these amendments, has been circulated to the

full court, and no judge of the court has requested a vote on the petition for rehearing en banc. Fed. R. App. P. 35(b).

The petition for panel rehearing and the petition for rehearing en banc are DENIED. No further petitions for rehearing or rehearing en banc may be filed. No other petitions for panel or en banc rehearing remain pending.

OPINION

CANBY, Circuit Judge:

This appeal concerns the joinder requirements of Rule 19 of the Federal Rules of Civil Procedure and their effect on litigation brought by an Indian tribe engaged in casino gaming. The Cachil Dehe Band of Wintun Indians of the Colusa Indian Community ("Colusa"), a federally recognized Indian tribe, entered into a gaming compact with the State of California in 1999. Colusa brought this action for declaratory and injunctive relief against the State, its Governor and the California Gambling Control Commission (collectively, "the State"). Colusa challenges the Commission's interpretation of the compact and the Commission's assumption of authority to administer unilaterally the licensing of electronic gaming devices. The district court concluded that the many other Indian tribes that had entered into identical gaming compacts with the State in 1999, as well as California's non-gaming tribes, were required parties to this action. Because Indian tribes enjoy sovereign immunity and the action could not proceed in their absence, the district court granted the State's motion for judgment on the pleadings. Colusa appeals. Because we conclude that the absent tribes are not required parties to this action, we reverse the district court's judgment (with one minor exception) and remand for further proceedings.

BACKGROUND

In 1988, Congress enacted the Indian Gaming Regulatory Act ("IGRA") "to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments." 25 U.S.C. § 2702(1). IGRA recognizes three classes of gaming. 25 U.S.C. § 2703(6)-(8). Slot machines and equivalent gaming devices, which are the exclusive subject of this litigation, are Class III games. *See* 25 U.S.C. § 2703(7)(B)(ii), (8). Under the statute, a tribe may conduct Class III gaming activities only "in conformance with a Tribal-State compact entered into by the Indian tribe." 25 U.S.C. § 2710(d)(1)(C).

In September 1999, Colusa entered into a gaming compact (the "Compact") with the State of California, which sets forth various provisions relating to the operation of Class III gaming devices. *See* Tribal-State Gaming Compact Between the Colusa Indian Community and the State of California (Oct. 8, 1999). At the same time, sixty-two other tribes (the "Compact Tribes") executed virtually identical bilateral compacts with the State (the "1999 Compacts").[1] *See Artichoke Joe's Cal. Grand Casino v. Norton,* 353 F.3d 712, 717-18 (9th Cir. 2003). The 1999 Compacts limit the number of gaming devices operated by each tribe to 2,000. *See* 1999 Compacts, § 4.3.2.2(a). They also establish a formula setting a statewide maximum number of gaming devices that all Compact Tribes may license in the aggregate under the 1999 Compacts. *Id.* § 4.3.2.2(a)(1).

A Compact Tribe, however, is not free to choose unilaterally how many gaming devices to operate, even if it wishes to operate fewer devices than the

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[1] A generic copy of a 1999 Compact is available at http://www.cgcc.ca.gov/enabling/tsc.pdf (last visited July 31, 2008).

2,000 limit. The Compacts establish a threshold number of devices that tribes may operate without a license. *Id.* § 4.3.1. In Colusa's case, that number was set at the number of gaming devices, 523, operated by the Tribe on September 1, 1999. For each additional gaming device, Colusa is required to obtain a license. *Id.*§ 4.3.2.2(a). These licenses are distributed among the Compact Tribes who apply to obtain them pursuant to a detailed draw process. *See id.* § 4.3.2.2(a)(3). Under this process, a Compact Tribe's likelihood of being awarded a license hinges on its placement in one of five priority tiers. *Id.* Placement in a particular tier depends in part-though not exclusively upon the number of gaming devices already operated by the tribe; the fewer gaming devices a tribe operates, the higher its priority tier. *Id.* If, in any given round, more licenses are requested in aggregate by the Compact Tribes than the Commission is distributing, the license draw process is structured to award the bulk of those licenses to the Compact Tribes who have not yet developed large gaming operations. *Id.*

In 2001, then-Governor Gray Davis issued an executive Order requiring the California Gambling Control Commission ("Commission") to take control of the licensing of gaming devices. Exec. Order No. D-29-01 (Mar. 8, 2001). Previously, a tribal administrator had conducted gaming device license draws. As soon as the Commission assumed control, it declared the licenses issued in previous draws invalid and replaced them with licenses issued by the Commission.

The 1999 Compacts also envision a revenue-sharing mechanism for the benefit of California's non-gaming tribes. *See* 1999 Compacts, § 4.3.2.1. In order to acquire licenses for gaming devices in excess of their initial allowance, Compact Tribes must pay "a non-refundable one-time pre-payment fee" of $1,250 for each gaming device being licensed. *Id.* § 4.3.2.2(e). In addition, in order to keep their licenses current, Compact Tribes must pay annual fees for

each licensed device in accordance with a pre-determined fee schedule. *Id.* § 4.3.2.2(a)(2). The fees are to be deposited in the Revenue Sharing Trust Fund ("Revenue Fund"), a fund created by the California State Legislature and administered by the Commission as trustee. *Id.* Each Non-Compact Tribe[2] is entitled to receive a distribution of $1.1 million per year from the Revenue Fund, unless the funds therein are insufficient, in which case the available funds are distributed in equal shares among the Non-Compact Tribes. *Id.* § 4.3.2.1(a). The Commission has interpreted the 1999 Compacts as providing that the nonrefundable, one-time pre-payment fee may be used as a credit toward annual license fees, and that no annual fees would be required for the first 350 licenses issued to a tribe.

Pursuant to the 1999 Compacts, the Legislature also created the Indian Gaming Special Distribution Fund ("Distribution Fund"). Cal. Gov't Code § 12012.85. The 1999 Compacts direct each gaming tribe to contribute to the Distribution Fund a portion of its revenues calculated according to the number of gaming devices operated by the tribe on September 1, 1999, and the "net wins" of those devices. 1999 Compacts § 5.1(a). The Legislature may then appropriate funds from the Distribution Fund to make up for "shortfalls that may occur in the . . . Revenue . . . Fund. This shall be the priority use of moneys in the ... Distribution Fund." Cal. Gov't Code § 12012.85(d).

In 2002, the Commission notified Colusa and other Compact Tribes that it would conduct a round of gaming device license draws that September. Prior

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[2] For purposes of revenue sharing, the 1999 Compacts define a Compact Tribe as a tribe having a compact with the State authorizing Class III Gaming; Non-Compact Tribes are defined as federally recognized tribes that are operating fewer than 350 gaming devices, whether or not such a tribe has a compact with the State.

to the draw, Colusa was operating its threshold number of 523 gaming devices for which it did not need licenses. Colusa notified the Commission of its intent to draw 250 licenses and tendered a $312,500 check as its non-refundable one-time pre-payment fee. Colusa was placed in the third priority tier and received 250 licenses. In November 2003, the Commission notified Colusa that it would conduct another round of draws in December 2003. Colusa requested 377 licenses and submitted a pre-payment of $471,250. Colusa was assigned to the fourth priority tier, a classification that Colusa challenges in this litigation. Colusa alleges that it was assigned to the fourth tier because it had previously drawn some licenses in the third tier, even though the number of gaming devices it operated after the earlier drawing should have continued to place it in the third tier. The December drawing was held with Colusa in the fourth tier and it received no licenses. The Commission refunded the prepayment for those requested licenses in full. In October 2004, the Commission conducted a third draw. Colusa advanced fees for 341 licenses and was again placed in the fourth priority tier. It received only 73 licenses. Colusa anticipates receiving a refund of the pre-payment on the licenses that it did not receive in the draw.

Immediately after the December 2003 draw, Colusa requested that the Governor meet and confer with the Tribe with regard to (1) Colusa's assignment to the fourth priority tier in the December 2003 draw; (2) the Commission's determination of the statewide aggregate number of licenses available to all tribes for issuance under the 1999 Compacts; (3) the Commission's role and authority in the draw process; and (4) the Commission's retention of the $312,500 tendered by the Tribe in connection with its draw of 250 licenses in September 2002. After an unsuccessful meeting, the State formally rejected each of Colusa's positions. Colusa then initiated this litigation.

In its complaint, Colusa asserts that the State, through the actions of the Commission, breached the Compact by: (1) excluding Colusa from the third priority tier in the December 2003 and October 2004 draws; (2) unilaterally determining the aggregate number of licenses authorized by the Compact; (3) refusing to refund Colusa's non-refundable one-time pre-payment fee in conjunction with the licenses Colusa obtained in September 2002 and October 2004; (4) conducting rounds of draws of licenses without authority; and (5) failing to negotiate in good faith. The State filed a motion for judgment on the pleadings, seeking to dismiss Colusa's first, second, third, and fourth claims for failure to join necessary and indispensable parties and its fifth claim for failure to exhaust non-judicial remedies.[3] The district court granted the State's motion to dismiss and entered judgment in its favor. Colusa appeals.

While Colusa's appeal was pending, the State negotiated and executed amendments to the 1999 Compacts individually with at least five Indian tribes, not including Colusa. [4] These amended

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[3] Colusa lists its fifth cause of action-failure to negotiate in good faith -among its grounds for appeal. It does not, however, advance any argument in support of reversing the district court's judgment with respect to that claim. Accordingly, we deem the claim abandoned. *See* Fed. R. App. P. 28(a)(9)(A); *Acosta-Huerta v. Estelle,* 7 F.3d 139, 144 (9th Cir. 1992) ("Issues raised in a brief which are not supported by argument are deemed abandoned.") (quoting *Leer v. Murphy,* 844 F.2d 628, 634 (9th Cir. 1988)). We therefore affirm the district court's dismissal of that claim.

[4] Amendment to the Tribal-State Compact Between the State of California and the Agua Caliente Band of Cahuilla Indians (Aug. 8, 2006); Amendment to the Tribal-State Compact Between the State of California and the Morongo Band of Mission Indians (Aug. 29, 2006); Amendment to the Tribal-State Compact Between the State of California and the Pechanga Band of Luiseno Mission Indians (Aug. 28, 2006); Amendment to the Tribal-State Compact Between the State of California and the

(continued...)

compacts, which became effective between December 2007 and January 2008 ("2007 Amended Compacts"), provide for the operation of up to 22,500 additional gaming devices outside the limits established by the 1999 Compacts.[5] *See* 2007 Amended Compacts § II.B (amended § 4.3.1(a)). In addition, four of the five 2007 Amended Compacts provide that, if a shortfall occurs in the Revenue Fund, "the State 'Gaming Agency shall direct a portion of the revenue contribution" made by each of the 2007 Compact Tribes "to increase the revenue contribution to the [Revenue Fund] in an amount sufficient to ensure the [Revenue Fund] has sufficient resources for each eligible recipient Indian tribe to receive quarterly payments pursuant to Government Code Section

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(...continued)
Sycuan Band of the Kumeyaay Nation' (Aug. 30, 2006);, Amendment to the Tribal-State Compact Between the State of California and the San Manuel Band of Serrano Mission Indians of the San Manuel Reservation (Aug. 28, *2006); see also* Indian Gaming, 72 Fed. Reg. 71,939-02-71,939-04 (Dec.19, 2007) (notices); Indian Gaming, 73 Fed. Reg. 3,480-01 (Jan. 18, 2008) (notice); California Gambling Control Commission, Tribal-State Gaming Compacts, http://www.cgcc.ca.gov/compacts.asp (last visited July 31, 2008). We take judicial notice of these amended compacts pursuant to Federal Rule of Evidence 201, which "permits us to 'take judicial notice of the records of state [entities] and other undisputed matters of public record,' [including] executed Compact[s] ... not in the district court record." *Wilbur v, Locke,* 423 F.3d 1101, 1112 (9th Cir. 2005) (quoting. *Disabled Rights Action Comm. v. Las Vegas Events. Inc.,* 375 F.3d 861, 866 n.l (9th Cir. 2004)). We note and overrule the State's objection to our consideration of these materials.

[5] The 2007 Amended Compacts allow the amending tribes to continue operating machines pursuant to licenses previously issued under the pool provision as well as machines which were operated on September 1, 1999. The pool provision licenses remain in force even though the 2007 Amended Compacts repeal the pool provision itself.

12012.90." E.g., Amendment to the Tribal-State Compact Between the State of California and the Morongo Band of Mission Indians § II.B (Aug. 29, 2006) (amended § 4.3.1.(*l*), *available at* http://www.cgcc.ca.gov/compacts.asp (last visited July 31, 2008). The aggregate revenue contribution made by these four tribes, which is therefore available to fill any shortfall in the Revenue Fund, exceeds $140 million per year. *See* 2007 Amended Compacts § II.B (amended § 4.3.1(b)(i)).

DISCUSSION

In addressing the State's Rule 19 motion to dismiss Colusa's claims for failure to join required parties, "the proper approach is first to decide whether the tribes are . . . '[required]' parties who should normally be joined under the standards of Rule 19(a)." *Am. Greyhound Racing, Inc. v. Hull,* 305 F.3d 1015, 1022 (9th Cir. 2002).[6] If, as the district court concluded in this case, the tribes are required parties, "the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed."[7]

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[6] The language of Federal Rule of Civil Procedure 19 has been amended since the district court's dismissal of this action. The Rules Committee advised that the changes were "stylistic only," *see* Fed. R. Civ. P. 19 advisory comm. nn. (2008), and the Supreme Court has agreed, *see Republic of the Philippines v. Pimentel,* 128 S. Ct. 2180, 2184 (2008). Two changes are relevant to this case. First, the word "required" replaced the word "necessary" in subparagraph (a). Second, the word "indispensable" is deleted from the current text of subparagraph (b). All quotations hereinafter to materials predating the 2007 amendment are altered, with brackets, to reflect the current language of Rule 19.

[7] The parties do not dispute that the absent tribes enjoy sovereign immunity. *See Santa Clara Pueblo v. Martinez,* 436 U.S. 49, 58 (1978). Accordingly, because they have not consented to suit, they cannot be joined in this action.

(continued...)

Fed. R. Civ. P. 19(b). On appeal, we review the district court's Rule 19 determinations for an abuse of discretion. *Am. Greyhound Racing*, 305 F.3d at. 1022; *of Republic of the Philippines v. Pimentel*, 128 S. Ct. 2180, 2189 (2008) (declining to address the standard of review for Rule 19(b) decisions). To the extent that in its inquiry the district court "decided a question of law, we review that determination de novo." *Am. Greyhound Racing*, 305 F.3d at 1022.

The issue that we find dispositive of all contested portions of this appeal is whether the absent tribes are "required" parties to the adjudication of Colusa's first, second, third and fourth claims within the meaning of Rule 19(a). We conclude that they are not, and that the district court abused its discretion in finding that the absent tribes were required parties to the disposition of these claims. We accordingly reverse the district court's judgment with respect to those claims and remand for further proceedings. Our conclusion that the absent tribes are not required parties under Rule 19(a) makes inapplicable the provisions of Rule 19(b) governing the decision whether to proceed with litigation when a required party cannot be joined; we therefore do not address the district court's determination of that issue. [8]

[1] The absent tribes are "required" parties to this action if they "claim [ ] an *interest* relating to the subject of the action and [are] so situated that

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(...continued)

[8] For the same reason, our analysis is not affected by the Supreme Court's recent holding in *Pimentel*, 128 S. Ct. at 2190. In *Pimentel*, the Supreme Court reversed the decision of a panel of this court because it had not "giv[en] full effect to sovereign immunity" in its Rule 19(b) calculus. *Id.* Because in our case the absent tribes are not required parties under Rule 19(a), we are unaffected by the Rule 19(b) analysis set forth in *Pimentel*.

disposing of the action in [their] absence may: (I) as a practical matter impair or impede [their] ability to *protect the interest;* or (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations *because of the interest."* Fed. R. Civ. P. 19(a)(1)(B) (emphases added).[9] A crucial premise of mandatory joinder, then, is that the absent tribes possess an interest in the pending litigation that is "legally protected." *Makah Indian Tribe v. Verity,* 910 F.2d 555, 558 (9th Cir. 1990). We have developed few categorical rules informing this inquiry. At one end of the spectrum, we have held that the interest at stake need not be "property in the sense of the due process clause." *Am. Greyhound Racing, 305* F.3d at 1023. At the other end of the spectrum, we have recognized that the "interest must be more than a financial stake, and more than speculation about a future event." *Makah,* 910 F.2d at 558 (citations omitted); *see also N. Alaska Envtl. Ctr. v. Hodel,* 803 F.2d 466, 468-69 (9th Cir. 1986) (holding that miners who had submitted mining plans to National Park Service were not necessary parties to an 'action to enjoin mining' in parks until environmental, impact statements were prepared). Within the wide boundaries set by these general principles, we have emphasized the "practical" and "fact-specific" nature of the inquiry. *Makah,* 910 F.2d at 558; *see also Bakia v. County of Los Angeles,* 687 F.2d 299, 301 (9th Cir. 1982) (per curiam) ("There is no precise formula for determining whether a particular nonparty should be joined under Rule 19(a) . . . . The determination is heavily influenced by the facts and circumstances of each case."). Accordingly; an interest that "arises from terms in bargained contracts" may be protected, but we have required

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[9] The State does not contend that, in the absence of the other Compact (or Non-Compact) Tribes, "the court cannot accord complete relief among existing parties." Fed. R. Civ. P. 19(a)(1)(A).

that such an interest be "substantial." *Am. Greyhound Racing,* 305 F.3d at 1023. An interest in a fixed fund or limited resource that the court is asked to allocate may also be protected. *Makah,* 910 F.2d at 558-59. At the same time, an absent party has no legally protected interest at stake in a suit merely to enforce compliance with administrative procedures. *See N. Alaska,* 803 F.2d at *469; Makah,* 910 F.2d at 559 ("The absent tribes would not be prejudiced because all of the tribes have an equal interest in an administrative process that is lawful.").

The Size of the License Pool

Colusa challenges the Commission's computation of the statewide maximum number of licenses that may be issued under the 1999 Compacts. The district court dismissed Colusa's claim, concluding that the other Compact Tribes are required parties in the absence of which the action should be dismissed. Although we agree with the district court that some absent tribes may prefer that the State issue fewer licenses, we reverse its dismissal of Colusa's claim because the absent tribes' only interest relevant for Rule 19(a) purposes is freedom from competition. We hold that this interest, without more, is not "legally protected" for Rule 19 purposes.

[2] It is important to identify clearly the Compact Tribes' interest at stake. Those Compact Tribes that currently enjoy on in the gaming industry will likely prefer to maintain a low statewide maximum number of licenses available under the 1999 Compacts. On the other hand, those who intend to expand their gaming operations and compete with the dominant gaming tribes will gladly accept an increase in the size of the license pool created by the 1999 Compacts. Indeed, the State itself repeatedly characterizes the absent tribes' interest at stake as the preservation of their "market share" within California's gaming industry. Properly framed, then, the respective advantages that various tribes may

enjoy under a more generous or restrictive interpretation of the pool provision are an economic incident of their market positions under, a common licensing regime.

[3] The mere fact that the outcome of Colusa's litigation may have some financial consequences for the non-party tribes is not sufficient to make those tribes required parties, however. *See, e.g., Makah,* 910 F.2d at 558 ("[The] interest must be more than a financial stake."). The absent tribes must have a legally protected interest and, on this record, the only potential protection lies in the 1999 Compacts themselves. The interest could be protected if it actually "arises from terms in bargained contracts." *Am. Greyhound Racing, 305* F.3d at 1023. We conclude that it does not.[10]The 1999 Com pacts do not purport to establish, through the license pool provision or otherwise, an overarching limit on the number of gaming licenses generally available in California. Rather, they place a limit only on the smaller universe of licenses that may be issued *under the* 1999 *Compacts.* [11] This limit alone is insufficient to determine the competitive landscape of California's gaming industry, for it leaves the State

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[10] We do not decide the broader question whether avoiding competition ever qualifies as a legally protected interest under Rule 19(a) in the context of Indian gaming. We note, however, that the legislative history of IGRA casts considerable doubt on a state's assertion of any such interest in the context of Indian Gaming; the Senate's Select Committee on Indian Affairs reported its intent that the states not use IGRA's Class III gaming compact requirement as a protectionist measure, although that concern was directed at the protection of non-tribal operators, not absent tribes as in this case. *See* S. Rep. No. 100-446, at 13 (1988), *reprinted in 1988* U.S.C.C.A.N. 3071, 3083.

[11]The 1999 Compacts establish a formula for a limit on the "number of machines that all Compact Tribes in the aggregate may license *pursuant to this Section.* . . ." 1999 Compacts § 4.3.2.2(a)(l) (emphasis added).

at liberty to issue an unlimited number of licenses outside the pool created by the 1999 Compacts. Indeed, the State has recently negotiated amendments, now in effect, to the 1999 Compacts with several tribes. These amendments provide for the operation of up to 22,500 additional gaming devices outside the pool created by the 1999 Compacts. These actions reflect the reality that the 1999 Compacts afford no express or implied protection against competition per se. The interest of some of the absent tribes in avoiding competition does not "arise [ ] from terms in bargained contracts," *id.*, and is accordingly not "legally protected" under the circumstances of this case. The absent 1999 Compact tribes thus are not required parties for litigation of Colusa's claim seeking to raise the aggregate limit on licenses under the 1999 Compacts.

In reaching this conclusion, we reject the State's contention that its licensing scheme is comparable to the system for the allocation of limited resources at issue in *Makah*. In *Makah*, we held that absent tribes had a protected interest that made them necessary parties to a claim for amendment of a preexisting allocation of a finite resource-a particular year's off-shore salmon harvest-because an allocation to one tribe necessarily entailed the parallel deprivation of another. *Makah*, 910 F.2d at 556-57. The resource at issue was finite: ocean fishing of salmon in excess of the total permitted harvest would jeopardize the survival of the species' population in the region's weakest runs. *Id.* at 557. In contrast, the gaming licensing scheme at issue here rations a resource license for gaming devices-that is, if not for purely economic considerations, effectively unlimited. Thus, for the reasoning of *Makah* to beat all relevant to this case, the State would need to show that, despite not being *inherently* finite, the resource of licenses for gaming devices is rendered at least *legally* finite by operation of the terms of the 1999 Compacts. As we have already explained, however, the statewide cap put in place by the 1999 Compacts does not, without more, constrain the number of gaming licenses

generally available in California. Thus, the absent tribes have no legally protected interest in the determination of the license pool that may be issued under the 1999 Compacts.

[4] Finally, we also find it significant that, unlike the plaintiff in *American Greyhound Racing,* Colusa does not seek to invalidate compacts to which it is not a party; this litigation is not *"aimed"* at the other tribes and their gaming. *Am. Greyhound Racing,* 305 F.3d at 1026. On the contrary, Colusa seeks to enforce a provision of its own Compact which may affect other tribes only incidentally. Under the specific circumstances of this case, the Compact Tribes are not required parties to the adjudication of Colusa's challenge to the size of the 1999 Compact license pool.[12]

Colusa's Placement in Priority Tier IV

Colusa next challenges its placement in the fourth priority tier since the December 2003 draw. The district court dismissed Colusa's claim on the ground that the absent Compact Tribes "would be deprived of th[eir gaming] licenses or the opportunity to obtain those licenses." This ruling was error, for it misconstrues both the nature of the absent tribes' interest in the licenses that may be issued in the future and the consequences of litigating Colusa's challenge to its placement in the fourth tier. It is true that, if one assumes that the license pool is finite, an order to issue new licenses to Colusa may render those licenses unavailable to the absent tribes,

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[12]We also are not persuaded by the State's unexplained contention that adjudication of Colusa's challenge to the Commission's determination of the statewide cap would expose the State to a significant risk of "inconsistent obligations" within the meaning of Rule 19. Should different district courts reach inconsistent conclusions with respect to the size of the license pool created under the 1999 Compacts, such inconsistencies could be resolved in an appeal to this court.

thereby depriving them of their "opportunity" to obtain them. Nonetheless, we conclude that the absent tribes' interest in their "opportunity" to obtain future licenses is insufficient to render them "required" parties for Rule 19(a) purposes.

[5] Once again, it is necessary carefully to identify the absent parties' interest at stake. To the extent that the "opportunity" to obtain licenses means the entitlement to participate in future rounds of draws, the litigation of Colusa's tier assignment will not "as a practical matter impair or impede the [absent tribes'] ability to protect the interest." FED. R. CIV. P. 19(a)(1)(B)(i). The absent tribes remain free to enter future draws. The possible complaint of the absent tribes, however, is that assignment of Colusa to a higher priority tier may dilute the probability that the absent tribes will obtain the licenses they apply for. But the absent tribes have no guarantee against having to compete with any particular number of tribes in their tier or a higher-priority tier. Nor can it be said that any particular degree of likelihood of receiving licenses "arises from terms in bargained contracts" and, more specifically, from the 1999 Compacts. *Am. Greyhound Racing, 305* F.3d at 1023. Under IGRA, entering into a compact with state authorities is, of course, a threshold requirement for Indian tribes wishing to develop Class III gaming operations. *See* 25 U.S.C. § 2710(d)(1)(C). In that sense, if it were not for the 1999 Compacts, the absent tribes would have *no* likelihood of ever obtaining any licenses. In our "practical" and "fact-specific" Rule 19 inquiry, however, we require more than mere "but-for" causation before recognizing a legally protected interest. *Makah,* 910 F.2d at 558; *see also Bakia, 687* F.2d at 301. Here, in addition to the threshold requirement of a compact, a number of other factors determine the actual likelihood that any given tribe will receive any licenses. As the facts of this litigation demonstrate, crucial among these factors is the past, present and future demand for new licenses by other tribes placed in higher or equal priority tiers. A tribe

wishing to obtain additional licenses has absolutely no control over the overall demand for new licenses, or over the number of tribes that may be placed in the same or a higher priority tier. Thus, the causal connection between the terms of the 1999 Compacts and an absent tribe's likelihood of obtaining future licenses is attenuated indeed. *See Makah,* 910 F2d at 558 ("speculation about a future event" does not give rise to a legally protected interest). We therefore conclude that no particular degree of likelihood of obtaining licenses "arises from terms in bargained contracts," *Am. Greyhound Racing,* 305 F.3d at 1023. As a consequence, the opportunity to obtain licenses does not qualify as a legally protected interest for Rule 19 purposes.

The interest of the absent tribes in Colusa's tier assignment is therefore quite different from the interest of the absent tribes in *American Greyhound Racing.* In that case, we emphasized that the gaming compacts between Arizona and the Indian tribes, which were the subject of that litigation, "provide[d] for automatic renewal if neither party gives the requisite notice of termination. [That] provision [was] an integral part of the existing compacts, and was part of the bargain that the tribes entered with the State." *Am. Greyhound Racing,* 305 F.3d at 1023. We reversed the district court's injunction because it modified the compacts of the absent tribes and stripped those tribes of the very object of their bargain-automatic renewal unless the parties affirmatively terminated the compacts. *id.* Here, Colusa's tier claim does not negate any absent tribe's right to its place in any tier, or its right to participate in the manner guaranteed by the Compacts. Colusa's claim at most increases the competition for licenses to be drawn but, as we have explained, the 1999 Compacts do not guarantee freedom from competition, nor do they grant an entitlement to draw any specific license or number of licenses or even a predetermined place in line that may entail a particular likelihood of obtaining new licenses. Thus, *American Greyhound Racing* does not control,

because litigation of Colusa's claim for placement in a higher tier cannot impair any Compact rights that were the object of the bargain of the absent tribes.

[6] Different considerations apply to the interest of the absent tribes in the licenses that they have already received. We do not question that the Compact Tribes which requested and obtained licenses in the December 2003 and subsequent draws by placing ahead of Colusa have a legally protected interest in those licenses. In order for the absent tribes to be "required" parties under Rule 19, however, the State must also show that their ability to protect their interest "may ... as a practical matter [be] impair[ed]" by the litigation of Colusa's claim to a higher tier placement. Fed. R. Civ. P. 19(a)(1)(B)(i). To the extent that Colusa seeks prospective relief in the form of a declaration that may place it in the third priority tier in future draws, such relief, if granted, would not prejudice absent tribes' legally protected interest in their *existing* licenses.[13] It was therefore an abuse of discretion for the district court to prohibit Colusa from litigating the legality of the Commission's interpretation of the tier system. Like the *Makah* court, however, we emphasize that "the scope of the relief available [to Colusa] ... is narrow." *Makah,* 910 F.2d at 559. Accordingly, to the extent Colusa seeks injunctive relief requiring the Commission to restore Colusa to the position it would have occupied under its claimed interpretation of the Compact by issuing new licenses, such relief may be granted only insofar as it does not interfere with the

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[13] The State's contention that prospective relief is inapposite because Colusa's tier placement would be determined by a formula not available to the other Compact Tribes is unavailing. As we explained, the 1999 Compacts do not create a legally protected interest in either freedom from competition, *see supra* p. 14927-28, or a specific place in line in future draws, *see supra* p. 14932-33.

validity or distribution of the licenses already assigned to the other Compact Tribes.[14]

Colusa's Pre-payment Fees

In its next claim, Colusa seeks restitution of the $403,750 it tendered to the Commission as pre-payment for the 323 licenses it has obtained in the draws thus far. The Commission, as trustee of the Revenue Fund, is holding the prepayment as a credit against future annual fees. Colusa argues that the pre-payment should be refunded because Colusa will not owe any annual fees until it draws at least 350 licenses-an illusory prospect so long as the tribe is assigned to the fourth priority tier.[15] The district court dismissed the claim because Colusa's non-refundable pre-payment is deposited in the Revenue Fund and, "to the extent that there is insufficient money to pay each Non-Compact Tribe $1.1 million per year, an award to plaintiff will lessen the amount of money distributed to each other tribe." Thus the district court held that the claim could not be

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[14] We reject the State's argument that, if Colusa prevailed on its first claim that it was entitled to a higher tier placement, the entire license draw process would have to be retroactively undone. Colusa does not seek this remedy and we see no reason why a court of equity would be compelled to grant it.

We also reject the State's contention that "the other 1999 Compact tribes, which have been placed in tiers based on the Commission's interpretation of the tier process, would nevertheless have suffered prejudice." The licenses that have already been issued comprise the absent tribes' only legally protected interest at stake. As we have made clear, however, none of those licenses may be invalidated at the remedial stage.

[15] The Tribe drew 250 licenses in September 2002, and another 73 in October 2004, for a total of 323 licenses. Colusa represents that it will not be permitted to draw any more licenses so long as it remains in a low priority tier.

litigated in the absence of the non-Compact tribes eligible for distributions from the Fund.

[7] We need not decide whether the district court's Rule 19(a) determination was correct. The State's intervening amendment and ratification of its 1999 Compacts with several gaming tribes, which is memorialized in the 2007 Amended Compacts, have significantly altered the financing of the Revenue Fund. Four of the 2007 Amended Compacts that are now in effect contain the following provision:

> If it is determined that there is an insufficient amount in the Indian Gaming Revenue Sharing Trust Fund in a fiscal year to distribute the quarterly payments pursuant to Government Code Section 12012.90 to each eligible recipient Indian tribe, then the State Gaming Agency shall direct a portion of the revenue contribution in Section 4.3.1(b)(i) to increase the revenue contribution to the Indian Gaming Revenue Sharing Trust Fund in Section 4.3.2.2 in an amount sufficient to ensure the Indian Gaming Revenue Sharing Trust Fund has sufficient resources for each eligible recipient Indian tribe to receive quarterly payments pursuant to Government Code Section 12012.90.

E.g., Amendment to the Tribal-State Compact Between the State of California and the Morongo Band of Mission Indians § II.B (Aug. 29, 2006), (amended § *4.3.1(l)*). The "revenue contribution" specified in amended section 4.3.1(b)(i) of these four 2007 Amended Compacts, in turn, guarantees an annual aggregate inflow to the State in excess of $140 million. *See* 2007 Amended Compacts § II.B (amended § 4.3.1(b)(i)). Should a shortfall develop in the Revenue Fund, the Commission "shall" direct a sufficient portion of this amount to the Revenue Fund to make up for the shortfall. The potential backfill of more than $140 million per year

guaranteed by the 2007 Amended Compacts appears as a practical matter to be more than sufficient to make up for any shortfall in the Revenue Fund.[16] We therefore conclude that the refund of Colusa's $403,750 pre-payment fee, if appropriate under the Compact, will not "as a practical matter impair or impede [the Non-Compact Tribes'] ability to protect [their] interest" in receiving their annual $1.1 million distribution as required by California state law. Fed. R. Civ. P. 19(a)(1)(B)(i).[17]

In the alternative, the State contends that the Compact Tribes are also required parties to the pre-payment fee claim. It argues that Colusa's success in obtaining its refund would impair the Compact Tribes' ability to protect their interest in "the 1999 Compact's interpretation and the fulfillment of its terms by all 1999 Compact tribes." The State's argument sweeps much too broadly. Nothing in the Compact establishes any obligation towards the other Compact Tribes insofar as the payment or refund ability of Colusa's advance fees into the Revenue Fund are concerned. [18] With respect to the

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[16] As of September 20, 2007, 71 Indian tribes were eligible to receive the $1.1-million annual distribution from the Revenue Fund. *See, e.g.*, California Gambling Control Commission, Revenue Sharing Trust Fund Recipients (Sept. 20, 2007), *available at* http://www.cgcc.ca.gov/rstfi/2008/DistribFundReport020503%20%20-%2003312008.pdf (last visited July 31, 2008).

[17] We reject the State's argument that "actual implementation (which is not described in [the 2007 Compacts]) could result in delayed reimbursement" to the Non-Compact Tribes. Rule 19 requires "more than speculation about a future event." *Makah*, 910 F.2d at 558 (citations omitted).

[18] It is true that, under the Compact, Colusa "agree[d] *with all other Compact Tribes* ... that each Non-Compact Tribe in the State shall receive the sum of $1.1 million per year." 1999 Compacts, § 4.3.2.1(a) (emphasis added). No reciprocal obligation (continued...)

prepayment provision, the 1999 Compacts are quintessentially bilateral. Accordingly, the Compact Tribes' relevant Rule 19 interest must arise, if at all, from the bare fact that the Compact Tribes are simultaneously parties to identical *bilateral* compacts with the State. We have never held that the mere coincidence of parallel and independent contractual obligations vis-a-vis a common party requires joinder of all similarly situated parties. *Cf. Dawavendewa v. Salt River Project Agric. Improvement & Power Dist.*, 276 F.3d 1150, 1157 (9th. Cir. 2002) ("[A] *party to a contract* is necessary, and if not susceptible to joinder, indispensable to litigation seeking to decimate that contract.") (emphasis added). The mutuality-of-party requirement of res judicata and defensive collateral estoppels ensures that the similarly situated absent tribes will not be prejudiced if and when they decide to challenge the Commission's interpretation of the refund provision of the 1999 Compacts.[19] On the facts of this case, we decline the State's invitation to extend the scope of mandatory joinder.

[8] Finally, we reject the State's argument that failure to join the Compact Tribes may expose the

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(...continued)
to *contribute* any specific .amount or forgo otherwise legitimate claims to the pre-payment fees, however, arises from this joint commitment.

[19]We also note that the State's contention that Colusa's success would impair "the fulfillment of [the 1999 Compacts'] terms by all Compact tribes" is vitiated by its circular reasoning. If Colusa succeeds in its claim, it will obtain relief that will, by definition, "fulfill" the pre-payment term of the Compact. In other words, the only "fulfillment" that Colusa's claim, if successful, would impair is that of the *Commission's* current interpretation of the provision. The Compact Tribes, however, have no "legally protected" interest in the "fulfillment" of the *Commission's* particular interpretation of the Compact.

State to inconsistent obligations. As the First Circuit has cogently explained,

> "[i]nconsistent obligations" are not ... the same as inconsistent adjudications or results. Inconsistent obligations occur when a party is unable to comply with one court's order without breaching another court's order concerning the same incident. Inconsistent adjudications or results, by contrast, occur when a defendant successfully defends a claim in one forum, yet loses on another claim arising from the same incident in another forum.

Delgado v. *Plaza Las Americas, Inc.*, 139 F.3d 1, 3 (1st Cir. 1998) (per curiam) (footnote and citations omitted); *see also* 4 James Wm. Moore et al., Moore's Federal Practice-Civil § 19.03[4][d] (2008). We adopt the approach endorsed by the First Circuit. Accordingly, the possibility that the State may have to refund Colusa's pre-payment fees while adhering to a different interpretation of the Compact in its dealings with some other tribes does not, without more, rise to the level of creating a "substantial risk" of incurring "inconsistent obligations." Fed. R. Civ. P. 19(a)(1)(B)(ii).

The Commission's Authority to Conduct Rounds of Draws

Colusa finally argues that the Commission lacks authority under the compact unilaterally to conduct draws of gaming device licenses. As relief, Colusa requests a declaration that the Commission "has no authority under the Compact unilaterally to administer the system established under the Compact for the issuance of Gaming device licenses, but only to do so in consultation with the Tribe." The district court concluded that, if Colusa "prevailed, the relief would deprive absent parties of their legal entitlements to the licenses awarded pursuant to an invalid process." We reverse the district court's

determination because it is contrary to our decision in *Makah.*

[9] In *Makah,* we held that the absent tribes were not required parties to the adjudication of the plaintiff tribe's "procedural claims"- its claim that the harvest quotas imposed by the Secretary of Commerce "were the product of commitments made outside the administrative process." *Makah,* 910 F.2d at 557 (internal quotation marks omitted). We reasoned that "[t]he absent tribes would not be prejudiced because all of the tribes have an equal interest in an administrative process that is lawful." *Id.* at 559. In so holding, we also made clear that Rule 19 required "the scope of the relief available to the *Makah* on their procedural claims [to be] narrow" and limited to prospective relief. *Id.* We find this reasoning dispositive in this case as well. Much like their counterparts in *Makah,* the absent tribes "have an equal interest in an administrative process that is lawful," *id.*—that is, that the Commission not conduct the draws of licenses *ultra vires.* Moreover, as we have already made clear, Rule 19 necessarily confines the relief that may be granted on Colusa's claims to remedies that do not invalidate the licenses that have already been issued to the absent Compact Tribes. *See Makah,* 910 F.2d at 559. Thus, we reverse the district court's dismissal of Colusa's fourth claim, albeit with the proviso that, were Colusa to prevail on the merits, no existing license may be invalidated at the remedial stage.[20]

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[20] We reject the State's contention that, if Colusa prevailed in establishing its fourth claim, the existing licenses would necessarily be void *ab initio.* It is true that, in *Lockyer v. City and County of San Francisco,* the Supreme Court of California held that marriage licenses issued by the City of San Francisco to same-sex couples in violation of state law were "*void* and of no legal effect from their inception." 33 Cal. 4th 1055, 1113 (2004). In that case, however, the Supreme Court of California emphasized the "unusual, perhaps unprecedented, set of circumstances" surrounding the invalidation of the marriage

(continued...)

CONCLUSION

We affirm the district court's judgment dismissing Colusa's claim for failure to negotiate in good faith. We reverse the district court's judgment dismissing Colusa's other claims on the pleadings, and remand for further proceedings consistent with this opinion. Colusa is entitled to its costs on appeal.

AFFIRMED IN PART; REVERSED AND REMANDED IN PART.

(...continued)
licenses in question. *Id.* Moreover, in reaching its conclusion, the court relied exclusively on the relevant provisions of California's Family Code and on case law addressing specifically marriages celebrated in violation of state law. *Id.* at 1113-14. Thus, *Lockyer* is not controlling. The parties have directed our attention to no other case-and we could find none-in support of the proposition that, under California law, the district court may not limit *relief* to future conduct if Colusa prevailed on the merits of its claim.

APPENDIX – E

APPENDIX E

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CACHIL DEHE BAND OF WINTUN INDIANS OF THE COLUSA INDIAN COMMUNITY, a federally recognized Indian Tribe,

Plaintiff-Appellant,

V.

STATE OF CALIFORNIA; CALIFORNIA GAMBLING CONTROL COMMISSION, an agency of the State of California; and ARNOLD SCHWARZENEGGER, Governor of the State of California,

Defendants-Appellees.

No. 06-16145

D.C. No.
CV-04-02265-FCD

OPINION

Appeal from the United States District Court
for the Eastern District of California
Frank C. Damrell, District Judge, Presiding

Argued and Submitted
April 9, 2008-Pasadena, California

Filed August 8, 2008

Before: William C. Canby, Jr., Andrew J. Kleinfeld, and Jay S. Bybee, Circuit Judges.

Opinion by Judge Canby

COUNSEL

George Forman, Forman & Associates, San Rafael, California, for the plaintiff-appellant.

Christine M. Murphy, Deputy Attorney General, Sacramento, California (briefs); Peter H. Kaufman, Deputy Attorney General, San Diego, California (oral argument); for the defendants-appellees.

OPINION

CANBY, Circuit Judge:

This appeal concerns the joinder requirements of Rule 19 of the Federal Rules of Civil Procedure and their effect on litigation brought by an Indian tribe engaged in casino gaming. The Cachil Dehe Band of Wintun Indians of the Colusa Indian Community ("Colusa"), a federally recognized Indian tribe, entered into a gaming compact with the State of California in 1999. Colusa brought this action for declaratory and injunctive relief against the State, its Governor and the California Gambling Control Commission (collectively, "the State"). Colusa challenges the Commission's interpretation of the compact and the Commission's assumption of authority to administer unilaterally the licensing of electronic gaming devices. The district court concluded that the many other Indian tribes that had entered into identical gaming compacts with the State in 1999, as well as California's non-gaming tribes, were required parties to this action. Because Indian tribes enjoy sovereign immunity and the action could not proceed in their absence, the district court granted the State's motion for judgment on the pleadings. Colusa appeals. Because we conclude that the absent tribes are not required parties to this action, we reverse the district court's judgment (with one minor exception) and remand for further proceedings.

BACKGROUND

In 1988, Congress enacted the Indian Gaming Regulatory Act ("IGRA") "to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments." 25 U.S.C. § 2702(1). IGRA recognizes three classes of gaming. 25 U.S.C. § 2703(6)-(8). Slot machines and equivalent gaming devices, which are the exclusive subject of this litigation, are Class III games. *See* 25 U.S.C. § 2703(7)(B)(ii), (8). Under the statute, a tribe may conduct Class III gaming activities only "in conformance with a Tribal-State compact entered into by the Indian tribe." 25 U.S.C. § 2710(d)(1)(C).

In September 1999, Colusa entered into a gaming compact (the "Compact") with the State of California, which sets forth various provisions relating to the operation of Class III gaming devices. *See* Tribal-State Gaming Compact Between the Colusa Indian Community and the State of California (Oct. 8, 1999). At the same time, sixty-two other tribes (the "Compact Tribes") executed virtually identical bilateral compacts with the State (the "1999 Compacts").[1] *See Artichoke Joe's Cal. Grand Casino v. Norton*, 353 F.3d 712, 717-18 (9th Cir. 2003). The 1999 Compacts limit the number of gaming devices operated by each tribe to 2,000. *See* 1999 Compacts, § 4.3.2.2(a). They also establish a formula setting a statewide maximum number of gaming devices that all Compact Tribes may license in the aggregate under the 1999 Compacts. *Id.* § 4.3.2.2(a)(1).

A Compact Tribe, however, is not free to choose unilaterally how many gaming devices to operate, even if it wishes to operate fewer devices than the

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[1] A generic copy of a 1999 Compact is available at http://www.cgcc.ca.gov/enabling/tsc.pdf (last visited July 31, 2008).

2,000 limit. The Compacts establish a threshold number of devices that tribes may operate without a license. *Id.* § 4.3.1. In Colusa's case, that number was set at the number of gaming devices, 523, operated by the Tribe on September 1, 1999. For each additional gaming device, Colusa is required to obtain a license. *Id.* § 4.3.2.2(a). These licenses are distributed among the Compact Tribes who apply to obtain them pursuant to a detailed draw process. *See id.* § 4.3.2.2(a)(3). Under this process, a Compact Tribe's likelihood of being awarded a license hinges on its placement in one of five priority tiers. *Id.* Placement in a particular tier depends in part-though not exclusively upon the number of gaming devices already operated by the tribe; the fewer gaming devices a tribe operates, the higher its priority tier. *Id.* If, in any given round, more licenses are requested in aggregate by the Compact Tribes than the Commission is distributing, the license draw process is structured to award the bulk of those licenses to the Compact Tribes who have not yet developed large gaming operations. *Id.*

In 2001, then-Governor Gray Davis issued an executive order requiring the California Gambling Control Commission ("Commission") to take control of the licensing of gaming devices. Exec. Order No. D-29-01 (Mar. 8, 2001). Previously, a tribal administrator had conducted gaming device license draws. As soon as the Commission assumed control, it declared the licenses issued in previous draws invalid and replaced them with licenses issued by the Commission.

The 1999 Compacts also envision a revenue-sharing mechanism for the benefit of California's non-gaming tribes. *See* 1999 Compacts, § 4.3.2.1. In order to acquire licenses for gaming devices in excess of their initial allowance, Compact Tribes must pay "a non-refundable one-time pre-payment fee" of $1,250 for each gaming device being licensed. *Id.* § 4.3.2.2(e). In addition, in order to keep their licenses current, Compact Tribes must pay annual fees for

each licensed device in accordance with a pre-determined fee schedule. *Id.* § 4.3.2.2(a)(2). The fees are to be deposited in 'the Revenue Sharing Trust Fund ("Revenue Fund"), a fund created by the California State Legislature and administered by the Commission as trustee. *Id.* Each Non-Compact Tribe[2] is entitled to receive a distribution of $1.1 million per year from the Revenue Fund, unless the funds therein are insufficient, in which case the available funds are distributed in equal shares among the Non-Compact Tribes. *Id.* § 4.3.2.1(a). The Commission has interpreted the 1999 Compacts as providing that the nonrefundable, one-time pre-payment fee may be used as a credit toward annual license fees, and that no annual fees would be required for the first 350 licenses issued to a tribe.

Pursuant to the 1999 Compacts, the Legislature also created the Indian Gaming Special Distribution Fund ("Distribution Fund"). Cal. Gov't Code § 12012.85. The 1999 Compacts direct each gaming tribe to contribute to the Distribution Fund a portion of its revenues calculated according to the number of gaming devices operated and the "net wins" of those devices. 1999 Compacts § 5.1(a). The Legislature may then appropriate funds from the Distribution Fund to make up for "shortfalls that may occur in the . . . Revenue . . . Fund. This shall be the priority use of moneys in the . . . Distribution Fund." Cal. Gov't Code § 12012.85(d).

In 2002, the Commission notified Colusa and other Compact Tribes that it would conduct a round of gaming device license draws that September. Prior to the draw, Colusa was operating its threshold

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[2]For purposes of revenue sharing, the 1999 Compacts define a Compact Tribe as a tribe having a compact with the State authorizing Class III Gaming; Non-Compact Tribes are defined as federally recognized tribes that are operating fewer than 350 gaming devices, whether or not such a tribe has a compact with the State.

number of 523 gaming devices for which it did not need licenses. Colusa notified the Commission of its intent to draw 250 licenses and tendered a $312,500 check as its non-refundable one-time pre-payment fee. Colusa was placed in the third priority tier and received 250 licenses. In November 2003, the Commission notified Colusa that it would conduct another round of draws in December 2003. Colusa requested 377 licenses and submitted a pre-payment of $471,250 Colusa was assigned to the fourth priority tier, a classification that Colusa challenges in this litigation. Colusa alleges that it was assigned to the fourth tier because it had previously drawn some licenses in the third tier, even though the number of gaming devices it operated after the earlier drawing should have continued to place it in the third tier. The December drawing was held with Colusa in the fourth tier and it received no licenses. The Commission refunded the prepayment for those requested licenses in full. In October 2004, the Commission conducted a third draw. Colusa advanced fees for 341 licenses and was again placed in the fourth priority tier. It received only 73 licenses. Colusa anticipates receiving a refund of the pre-payment on the licenses that it did not receive in the draw.

Immediately after the December 2003 draw, Colusa requested that the Governor meet and confer with the Tribe with regard to (1) Colusa's assignment to the fourth priority tier in the December 2003 draw; (2) the Commission's determination of the statewide aggregate number of licenses available to all tribes for issuance under the 1999 Compacts; (3) the Commission's role and authority in the draw process; and (4) the Commission's retention of the $312,500 tendered by the Tribe in connection with its draw of 250 licenses in September 2002. After an unsuccessful meeting, the State formally rejected each of Colusa's positions. Colusa then initiated this litigation.

In its complaint, Colusa asserts that the State, through the actions of the Commission, breached the Compact by: (1) excluding Colusa from the third priority tier in the December 2003 and October 2004 draws; (2) unilaterally determining the aggregate number of licenses authorized by the Compact; (3) refusing to refund Colusa's non-refundable one-time prepayment fee in conjunction with the licenses Colusa obtained in September 2002 and October 2004; (4) conducting rounds of draws of licenses without authority; and (5) failing to negotiate in good faith. The State filed a motion for judgment on the pleadings, seeking to dismiss Colusa's first, second third, and fourth claims for failure to join necessary and indispensable parties and its fifth claim for failure to exhaust non-judicial remedies.[3] The district court granted the State's motion to dismiss and entered judgment in its favor. Colusa appeals.

While Colusa's appeal was pending, the State negotiated and executed amendments to the 1999 Compacts individually with at least five Indian tribes, not including Colusa.[4] These amended

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[3]Colusa lists its fifth cause of action-failure to negotiate in good faith-among its grounds for appeal. It does not, however, advance any argument in support of reversing the district court's judgment with respect to that claim. Accordingly, we deem the claim abandoned. *See* Fed. R. App. P. 28(a)(9)(A); *Acosta-Huerta v. Estelle*, 7 F.3d 139, 144 (9th Cir. 1992) ("Issues raised in a brief which are not supported by argument are deemed abandoned.") (quoting *Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988)). We therefore affirm the district court's dismissal of that claim.

[4]Amendment to the Tribal-State Compact Between the State of California and the Agua Caliente Band of Cahuilla Indians (Aug. 8, 2006); Amendment to the Tribal-State Compact Between the State of California and the Morongo Band of Mission Indians (Aug. 29, 2006); Amendment to the Tribal-State Compact Between the State of California and the Pechanga Band of Luiseno Mission Indians (Aug. 28, 2006); Amendment to the

(continued...)

compacts, which became effective between December 2007 and January 2008 ("2007 Amended Compacts"), provide for the issuance of up to 22,500 additional gaming device licenses outside the limits established by the 1999 Compacts. [5] *See* 2007 Amended Compacts § II.B (amended § 4.3.1(a)). In addition, four of the five 2007 Amended Compacts provide that, if a shortfall occurs in the Revenue Fund, "the State Gaming Agency shall direct a portion of the revenue contribution" made by each of the 2007 Compact Tribes "to increase the revenue contribution to the [Revenue Fund] in an amount sufficient to ensure the [Revenue Fund] has sufficient resources for each eligible recipient Indian tribe to receive quarterly payments pursuant to Government Code

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(...continued)
Tribal-State Compact Between the State of California and the Sycuan Band of the Kumeyaay Nation (Aug. 30, 2006); Amendment to the Tribal-State Compact Between the State of California and the San Manuel Band of Serrano Mission Indians of the San Manuel Reservation (Aug. 28, 2006); *see also* Indian Gaming, 72 Fed. Reg. 71,939-02-71,939-04 (Dec. 19, 2007) (notices); Indian Gaming, 73 Fed. Reg. 3,480-01 (Jan. 18, 2008) (notice); California Gambling Control Commission, Tribal-State Gaming Compacts, http://www.cgcc.ca.gov/compacts.asp (last visited July 31, 2008). We take judicial notice of these amended compacts pursuant to - Federal Rule of Evidence 201, which "permits us to 'take judicial notice of the records of state [entities] and other undisputed matters of public record,' [including] executed Compact[s] . . . not in the district court record." *Wilbur* v. *Locke*, 423 F.3d 1101, 1112 (9th Cir. 2005) (quoting *Disabled Rights Action Comm.* v. *Las Vegas Events, Inc.*, 375 F.3d 861, 866 n.1 (9th Cir. 2004)). We note and overrule the State's objection to our consideration of these materials.

[5]The 2007 Amended Compacts allow the amending tribes to continue operating machines pursuant to licenses previously issued under the pool provision as well as machines which were operated on September 1, 1999. The pool provision licenses remain in force even though the 2007 Amended Compacts repeal the pool provision itself.

Section 12012.90." *E.g.,* Amendment to the Tribal-State Compact Between the State of California and the Morongo Band of Mission Indians § II.B (Aug. 29, 2006) (amended § 4.3.1.(*I*)), *available at* http://www.cgcc.ca.gov/compacts.asp (last visited July 31, 2008). The aggregate revenue contribution made by these four tribes, which is therefore available to fill any shortfall in the Revenue Fund, exceeds $140 million per year. *See* 2007 Amended Compacts § II.B (amended § 4.3.1(b)(i)).

DISCUSSION

In addressing the State's Rule 19 motion to dismiss Colusa's claims for failure to join required parties, "the proper approach is first to decide whether the tribes are . . '[required]' parties who should normally be joined under the standards of Rule 19(a)." *Am. Greyhound Racing, Inc. v. Hull,* 305 F.3d 1015, 1022 (9th Cir. 2002).[6] If, as the district court concluded in this case, the tribes are required parties, "the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed."[7]

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[6]The language of Federal Rule of Civil Procedure 19 has been amended since the district court's dismissal of this action. The Rules Committee advised that the changes were "stylistic only," *see* Fed. R. Civ. P. 19 advisory comm. nn. (2008), and the Supreme Court has agreed, *see Republic of the Philippines v. Pimentel,* 128 S. Ct. 2180, 2184 (2008). Two changes are relevant to this case. First, the word "required" replaced the word "necessary" in subparagraph (a). Second, the word "~indispensable" is deleted from the current text of subparagraph (b). All quotations hereinafter to materials predating the 2007 amendment are altered, with brackets, to reflect the current language of Rule 19.

[7]The parties do not dispute that the absent tribes enjoy sovereign immunity. *See Santa Clara Pueblo v. Martinez,* 436 U.S. 49, 58 (1978). Accordingly, because they have not consented to suit, they cannot be joined in this action.

Fed. R. Civ. P. 19(b). On appeal, we review the district court's Rule 19 determinations for an abuse of discretion. *Am. Greyhound Racing*, 305 F.3d at 1022; *cf Republic of the Philippines v. Pimentel*, 128 S. Ct. 2180, 2189 (2008) (declining to address the standard of review for Rule 19(b) decisions). To the extent that in its inquiry the district court "decided a question of law, we review that determination de novo." *Am. Greyhound Racing*, 305 F.3d at 1022. The issue that we find dispositive of all contested portions of this appeal is whether the absent tribes are "required" parties to the adjudication of Colusa's first, second, third and fourth claims within the meaning of Rule 19(a). We conclude that they are not, and that the district court abused its discretion in finding that the absent tribes were required parties to the disposition of these claims. We accordingly reverse the district court's judgment with respect to those claims and remand for further proceedings Our conclusion that the absent tribes are not required parties under Rule 19(a) makes inapplicable the provisions of Rule 19(b) governing the decision whether to proceed with litigation when a required party cannot be joined; we therefore do not address the district court's determination of that issue.[8]

[1] The absent tribes are "required" parties to this action if they "claim[ ] an *interest* relating to the subject of the action and [are] so situated that disposing of the action in [their] absence may: (i) as a practical matter impair or impede [their] ability to *protect the interest;* or (ii) leave an existing party subject to a substantial risk of incurring double,

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[8]For the same reason, our analysis is not affected by the Supreme Court's recent holding in *Pimentel*, 128 S. Ct. at 2190. In *Pimentel*, the Supreme Court reversed the decision of a panel of this court because it had not "giv[en] full effect to sovereign immunity" in its Rule 19(b) calculus. *Id.* Because in our case the absent tribes are not required parties under Rule 19(a), we are unaffected by the Rule 19(b) analysis set forth in *Pimentel*.

multiple, or otherwise inconsistent obligations *because of the interest."* Fed. R. Civ. P. 19(a)(1)(B) (emphases added).[9] A crucial premise of mandatory joinder, then, is that the absent tribes possess an interest in the pending litigation that is "legally protected." *Makah Indian Tribe* v. *Verity,* 910 F.2d 555, 558 (9th Cir. 1990). We have developed few categorical rules informing this inquiry. At one end of the spectrum, we have held that the interest at stake need not be "property in the sense of the due process clause." *Am. Greyhound Racing, 305* F.3d at 1023. At the other end of the spectrum, we have recognized that the "interest must be more than a financial stake, and more than speculation about a future event." *Makah,* 910 F.2d at 558 (citations omitted); *see also N. Alaska Envtl. Ctr. v. Hodel,* 803 F.2d 466, 468-69 (9th Cir. 1986) (holding that miners who had submitted mining plans to National Park Service were not necessary parties to an action to enjoin mining in parks until environmental impact statements were prepared). Within the wide boundaries set by these general principles, we have emphasized the "practical" and "fact-specific" nature of the inquiry. *Makah,* 910 F.2d at 558; *see also Bakia v. County of Los Angeles,* 687 F.2d 299, 301 (9th Cir. 1982) (per curiam) ("There is no precise formula for determining whether a particular nonparty should be joined under Rule 19(a) . . . The determination is heavily influenced by the facts and circumstances of each case."). Accordingly, an interest that "arises from terms in bargained contracts" may be protected, but we have required that such an interest be "substantial." *Am. Greyhound Racing,* 305 F.3d at 1023. An interest in a fixed fund or limited resource that the court is asked to allocate may also be protected. *Makah,* 910 F.2d at 558-59. At the same time, an absent party has no

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[9]The State does not contend that, in the absence of the other Compact (or Non-Compact) Tribes, "the court cannot accord complete relief among existing parties." Fed. R. Civ. P. 19(a)(1)(A).

legally protected interest at stake in a suit merely to enforce compliance with administrative procedures. *See N. Alaska,* 803 F.2d at *469; Makah,* 910 F.2d at 559 ("The absent tribes would not be prejudiced because all of the tribes have an equal interest in an administrative process that is lawful.").

The Size of the License Pool

Colusa challenges the Commission's computation of the statewide maximum number of licenses that may be issued under the 1999 Compacts. The district court dismissed Colusa's claim, concluding that the other Compact Tribes are required parties in the absence of which the action should be dismissed. Although we agree with the district court that some absent tribes may prefer that the State issue fewer licenses, we reverse its dismissal of Colusa's claim because the absent tribes' only interest relevant for Rule 19(a) purposes is free from competition. We hold that this interest, without more, is not "legally protected" for Rule 19 purposes.

[2] It is important to identify clearly the Compact Tribes' interest at stake. Those Compact Tribes that currently enjoy a dominant position in the gaming industry will likely prefer to maintain a low statewide maximum number of licenses available under the 1999 Compacts. On the other hand, those who intend to expand their gaming operations and compete with the dominant gaming tribes will gladly accept an increase in the size of the license pool created by the 1999 Compacts. Indeed, the State itself repeatedly characterizes the absent tribes" interest at stake as the preservation of their "market share" within California's gaming industry. Properly framed, then, the respective advantages that various tribes may enjoy under a more generous or restrictive interpretation of the pool provision are an economic incident of their market positions under a common licensing regime.

[3] The mere fact that the outcome of Colusa's litigation may have some financial consequences for the non-party tribes is not sufficient to make those tribes required parties, however. *See, e.g., Makah,* 910 F.2d at 558 ("[The] interest must be more than a financial stake."). The absent tribes must have a legally protected interest and, on this record, the only potential protection lies in the 1999 Compacts themselves. The interest could be protected if it actually "arises from terms in bargained contracts." *Am. Greyhound Racing, 305* F.3d at 1023. We conclude that it does not.[10] The 1999 Compacts do not purport to establish, through the license pool provision or otherwise, an overarching limit on the number of gaming licenses generally available in California. Rather, they place a limit only on the smaller universe of licenses that may be issued *under the* 1999 *Compacts.*[11] This limit alone is insufficient to determine the competitive landscape of California's gaming industry, for it leaves the State at liberty to issue an unlimited number of licenses outside the pool created by the 1999 Compacts. Indeed, the State has recently negotiated amendments, now in effect, to the 1999 Compacts with several tribes. These amendments provide for

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[10] We do not decide the broader question whether avoiding competition ever qualifies as a legally protected interest under Rule 19(a) in the context of Indian gaming. We note, however, that the legislative history of IGRA casts considerable doubt on a state's assertion of any such interest in the context of Indian gaming; the Senate's Select Committee on Indian Affairs reported its intent that the states not use IGRA's Class III gaming compact requirement as a protectionist measure, although that concern was directed at the protection of non-tribal operators, not absent tribes as in this case. *See* S. Rep. No. 100-446, at 13 (1988), *reprinted in 1988* U.S.C.C.A.N. 3071, 3083.

[11] The 1999 Compacts establish a formula for a limit on the "number of machines that all Compact Tribes in the aggregate may license *pursuant to this Section* . . . ." 1999 Compacts § 4.3.2.2(a)(1) (emphasis added).

the issuance of up to 22,500 additional licenses outside the pool created by the 1999 Compacts. These actions reflect the reality that the 1999 Compacts afford no express or implied protection against competition per se. The interest of some of the absent tribes in avoiding competition does not "arise[ ] from terms in bargained contracts," *id,* and is accordingly not "legally protected" under the circumstances of this case. The absent 1999 Compact tribes thus are not required parties for litigation of Colusa's claim seeking to raise the aggregate limit on licenses under the 1999 Compacts.

In reaching this conclusion, we reject the State's contention that its licensing scheme is comparable to the system for the allocation of limited resources at issue in *Makah.* In *Makah,* we held that absent tribes had a protected interest that made them necessary parties to a claim for amendment of a preexisting allocation of a finite resource-a particular year's off-shore salmon harvest-because an allocation to one tribe necessarily entailed the parallel deprivation of another. *Makah,* 910 F.2d at 556-57. The resource at issue was finite: ocean fishing of salmon in excess of the total permitted harvest would jeopardize the survival of the species' population in the region's weakest runs. *Id.* at 557. In contrast, the gaming licensing scheme at issue here rations a resource licenses for gaming devices—that is, if not for purely economic considerations, effectively unlimited. Thus, for the reasoning of *Makah* to be at all relevant 'to this case, the State would need to show that, despite not being *inherently* finite, the resource of licenses for gaming devices is rendered at least *legally* finite by operation of the terms of the 1999 Compacts. As we have already explained, however, the statewide cap put in place by the 1999 Compacts does not, without more, constrain the number of gaming licenses generally available in California. Thus, the absent tribes have no legally protected interest in the determination of the license pool that may be issued under the 1999 Compacts.

[4] Finally, we also find it significant that, unlike the plaintiff in *American Greyhound Racing*, Colusa does not seek to invalidate compacts to which it is not a party; this litigation is not *"aimed"* at the other tribes and their gaming. *Am. Greyhound Racing*, 305 F.3d at 1026. On the contrary, Colusa seeks to enforce a provision of its own Compact which may affect 'other tribes only incidentally. Under the specific circumstances of this case, the Compact Tribes are not required parties to the adjudication of Colusa's challenge to the size of the 1999 Compact license pool.[12]

Colusa's Placement in Priority Tier IV

Colusa next challenges its placement in the fourth priority tier since the December 2003 draw. The district court dismissed Colusa's claim on the ground that the absent Compact Tribes "would be deprived of th[eir gaming] licenses or the opportunity to obtain those licenses." This ruling was error, for it misconstrues both the nature of the absent tribes' interest in the licenses that may be issued in the future and the consequences of litigating Colusa's challenge to its placement in the fourth tier. It is true that, if one assumes that the license pool is finite, an order to issue new licenses to Colusa may render those licenses unavailable to the absent tribes, thereby depriving them of their "opportunity" to obtain them. Nonetheless, we conclude that the absent tribes' interest in their "opportunity" to obtain future licenses is insufficient to render them "required" parties for Rule 19(a) purposes.

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[12]We also are not persuaded by the State's unexplained contention that adjudication of Colusa's challenge to the Commission's determination of the statewide cap would expose the State to a significant risk of "inconsistent obligations" within the meaning of Rule 19. Should different district courts reach inconsistent conclusions with respect to the size of the license pool created under the 1999 Compacts, such inconsistencies could be resolved in an appeal to this court.

[5] Once again, it is necessary carefully to identify the absent parties' interest at stake. To the extent that the "opportunity" to obtain licenses means the entitlement to participate in future rounds of draws, the litigation of Colusa's tier assignment will not "as a practical matter impair or impede the [absent tribes'] ability to protect the interest." Fed. R. Civ. P. 19(a)(1)(B)(i). The absent tribes remain free to enter future draws. The possible complaint of the absent tribes, however, is that assignment of Colusa to a higher priority tier may dilute the probability that the absent tribes will obtain the licenses they apply for. But the absent tribes have no guarantee against having to compete with any particular number of tribes in their tier or a higher-priority tier. Nor can it be said that any particular degree of likelihood of receiving licenses "arises from terms in bargained contracts" and, more specifically, from the 1999 Compacts. *Am. Greyhound Racing, 305* F.3d at 1023. Under IGRA, entering into a compact with state authorities is, of course, a threshold requirement for Indian tribes wishing to develop Class III gaming operations. *See* 25 U.S.C. § 2710(d)(1)(C). In that sense, if it were not for the 1999 Compacts, the absent tribes would have *no* likelihood of ever obtaining any licenses. In our "practical" and "fact specific" Rule 19 inquiry, however, we require more than mere "but-for" causation before recognizing a legally protected interest. *Makah,* 910 F.2d at 558; *see also Bakia, 687* F.2d. at 301. Here, in addition to the threshold requirement of a compact, a number of other factors determine the actual likelihood that any given tribe will receive any licenses. As the facts of this litigation demonstrate, crucial among these factors is the past, present and future demand for new licenses by other tribes placed in higher or equal priority tiers. A tribe wishing to obtain additional licenses has absolutely no control over the overall demand for new licenses, or over the number of tribes that may be placed in the same or a higher priority tier. Thus, the causal connection between the terms of the 1999

Compacts and an absent tribe's likelihood of obtaining future licenses is attenuated indeed. *See Makah,* 910 F.2d at 558 ("speculation about a future event" does not give rise to a legally protected interest). We therefore conclude that no particular degree of likelihood of obtaining licenses "arises from terms in bargained contracts," *Am. Greyhound Racing,* 305 F.3d at 1023. As a consequence, the opportunity to obtain licenses does not qualify as a legally protected interest for Rule 19 purposes.

The interest of the absent tribes in Colusa's tier assignment is therefore quite different from the interest of the absent tribes in *American Greyhound Racing.* In that case, we emphasized that the gaming compacts between Arizona and the Indian tribes, which were the subject of that litigation, "provide[d] for automatic renewal if neither party gives the requisite notice of termination. [That] provision [was] an integral part of the existing compacts, and was part of the bargain that the tribes entered with the State." *Am. Greyhound Racing,* 305 F.3d at 1023. We reversed the district court's injunction because it modified the compacts of the absent tribes and stripped those tribes of the very object of their bargain automatic renewal unless the parties affirmatively terminated the compacts. *Id.* Here, Colusa's tier claim does not negate any absent tribe's right to its place in any tier, or its right to participate in the manner guaranteed by the Compacts. Colusa's claim at most increases the competition for licenses to be drawn but, as we have explained, the 1999 Compacts do not guarantee freedom from competition, nor do they grant an, entitlement to draw any specific license or number of licenses or even a pre-determined place in line that may entail a particular likelihood of obtaining new licenses. Thus, *American Greyhound Racing* does not control, because litigation of Colusa's claim for placement in a higher tier cannot impair any Compact rights that were the object of the bargain of the absent tribes.

[6] Different considerations apply to the interest of the absent tribes in the licenses that they have already received. We do not question that the Compact Tribes which requested and obtained licenses in the December 2003 and subsequent draws by placing ahead of Colusa have a legally protected interest in those licenses. In order for the absent tribes to be "required" parties under Rule 19, however, the State must also show that their ability to protect their interest "may . . . as a practical matter [be] impair[ed]" by the litigation of Colusa's claim to a higher tier placement. Fed. R. Civ. P. 19(a)(l)(B)(i). To the extent that Colusa seeks prospective relief in the form of a declaration that may place it in the third priority tier in future draws, such relief, if granted, would not prejudice the absent tribes' legally protected interest in their *existing* licenses.[13] It was therefore an abuse of discretion for the district court to prohibit Colusa from litigating the legality of the Commission's interpretation of the tier system. Like the *Makah* court, however, we emphasize that "the scope of the relief available [to Colusa] . . . is narrow." *Makah,* 910 F.2d at 559. Accordingly, to the extent Colusa seeks injunctive relief requiring the Commission to restore Colusa to the position it would have occupied under its claimed interpretation of the Compact by issuing new licenses, such relief may be granted only insofar as it does not interfere with the validity or distribution of the licenses already assigned to the other Compact Tribes.[14]

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[13] The State's contention that prospective relief is inapposite because Colusa's tier placement would be determined by a formula not available to the other Compact Tribes is unavailing. As we explained, the 1999 Compacts do not create a legally protected interest in either freedom from competition, see *supra* p. 10 172-73, or a specific place in line in future draws, *see supra* p. 10177-78.

[14]We reject the State's argument that, if Colusa prevailed on its first claim that it was entitled to a higher tier placement, (continued...)

Colusa's Pre-payment Fees

In its next claim, Colusa seeks restitution of the $403,750 it tendered to the Commission as pre-payment for the 323 licenses it has obtained in the draws thus far. The Commission, as trustee of the Revenue Fund, is holding the prepayment as a credit against future annual fees. Colusa argues that the pre-payment should be refunded because Colusa will not owe any annual fees until it draws at least 350 licenses an illusory prospect so long as the tribe is assigned to the fourth priority tier.[15] The district court dismissed the claim because Colusa's non-refundable pre-payment is deposited in the Revenue Fund and, "to the extent that there is insufficient money to pay each Non-Compact Tribe $1.1 million per year, an award to plaintiff will lessen the amount of money distributed to each other tribe." Thus the district court held that the claim could not be litigated in the absence of the non-Compact tribes eligible for distributions from the Fund.

[7] We need not decide whether the district court's Rule 19(a) determination was correct. The

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the entire license draw process would have to be retroactively undone. Colusa does not seek this remedy and we see no reason why a court of equity would be compelled to grant it. We also reject the State's contention that "the other 1999 Compact tribes, which have been placed in tiers based on the Commission's interpretation of the tier process, would nevertheless have suffered prejudice." The licenses that have already been issued comprise the absent tribes' only legally protected interest at stake. As we have made clear, however, none of those licenses may be invalidated at the remedial stage.

[15] The Tribe drew 250 licenses in September 2002, and another 73 in October 2004, for a total of 323 licenses. Colusa represents that it will not be permitted to draw any more licenses so long as it remains in a low priority tier.

State's intervening amendment and ratification of its 1999 Compacts with several gaming tribes, which is memorialized in the 2007 Amended Compacts, have significantly altered the financing of the Revenue Fund. Four of the 2007 Amended Compacts that are now in effect contain the following provision:

> If it is determined that there is an insufficient amount in the Indian Gaming Revenue Sharing Trust Fund in a fiscal year to distribute the quarterly payments pursuant to Government Code Section 12012.90 to each eligible recipient Indian tribe, then the State Gaming Agency shall direct a portion of the revenue contribution in Section 4.3.1 (b)(i) to increase the revenue contribution to the Indian Gaming Revenue Sharing Trust Fund in Section 4.3.2.2 in an amount sufficient to ensure the Indian Gaming Revenue Sharing Trust Fund has sufficient resources for each eligible recipient Indian tribe to receive quarterly payments pursuant to Government Code Section 12012.90.

E.g., Amendment to the Tribal-State Compact Between the State of California and the Morongo Band of Mission Indians § II.B (Aug. 29, 2006), (amended § 4.3.1*(1)*). The "revenue contribution" specified in amended section 4.3. 1(b)(i) of these four 2007 Amended Compacts, in turn, guarantees an annual aggregate inflow to the State in excess of $140 million. *See* 2007 Amended Compacts § II.B (amended § 4.3.1 (b)(i)). Should a shortfall develop in the Revenue Fund, the Commission "shall" direct a sufficient portion of this amount to the Revenue Fund to make up for the shortfall. The potential backfill of more than $140 million per year guaranteed by the 2007 Amended Compacts appears as a practical matter to be more than sufficient to

make up for any shortfall in the Revenue Fund.[16] We therefore conclude that the refund of Colusa's $403,750 pre-payment fee, if appropriate under the Compact, will not "as a practical matter impair or impede [the Non-Compact Tribes'] ability to protect [their] interest" in receiving their annual $1.1 million distribution as required by California state law. Fed. R. Civ. P. 19(a)(1)(B)(i).[17]

In the alternative, the State contends that the Compact Tribes are also required parties to the pre-payment fee claim. It argues that Colusa's success in obtaining its refund would impair the Compact Tribes' ability to protect their interest in "the 1999 Compact's interpretation and the fulfillment of its terms by all 1999 Compact tribes." The State's argument sweeps much too broadly. Nothing in the Compact establishes any obligation towards the other Compact Tribes insofar as the payment or refundability Colusa's advance fees into the Revenue Fund are concerned.[18] With respect to the pre-

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[16]As of September 20, 2007, 71 Indian tribes were eligible to receive the $1.1-million annual distribution from the Revenue Fund. *See, e.g.*, California Gambling Control Commission, Revenue Sharing Trust Fund Recipients (Sept. 20, 2007), *available at* http://www.cgcc.ca.gov/rstfi/2008/DistribFundReport020503%20%20-%2003I2008.pdf (last visited July 31, 2008).

[17] We reject the State's argument that "actual implementation (which is not described in [the 2007 Compacts]) could result in delayed reimbursement" to the Non-Compact Tribes. Rule 19 requires "more than speculation about a future event." *Makah*, 910 F.2d at 558 (citations omitted).

[18]It is true that, under the Compact, Colusa "agree[d] *with all other Compact Tribes* . . . that each Non-Compact Tribe in the State shall receive the sum of $1.1 million per year." 1999 Compacts, § 4.3.2.l(a) (emphasis added). No reciprocal obligation to *contribute* any specific amount or forgo otherwise legitimate claims to the pre-payment fees, however, arises from this joint

(continued...)

payment provision, the 1999 Compacts are quintessentially bilateral. Accordingly, the Compact Tribes' relevant Rule 19 interest must arise, if at all, from the bare fact that the Compact Tribes are simultaneously parties to identical *bilateral* compacts with the State. We have never held that the mere coincidence of parallel and independent contractual obligations vis-a-vis a common party requires joinder of all similarly situated parties. *Cf. Dawavendewa v. Salt River Project Agric. Improvement & Power Dist.*, 276 F.3d 1150, 1157 (9th Cir. 2002) ("[A] *party to a contract* is necessary, and if not susceptible to joinder, indispensable to litigation seeking to decimate that contract.") (emphasis added). The mutuality-of party requirement of res judicata and defensive collateral estoppel ensures that the similarly situated absent tribes will not be prejudiced if and when they decide to challenge the Commission's interpretation of the refund provision of the 1999 Compacts.[19] On the facts of this case, we decline the State's invitation to extend the scope of mandatory joinder.

[8] Finally, we reject the State's argument that failure to join the Compact Tribes may expose the State to inconsistent obligations. As the First Circuit has cogently explained,

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(...continued)
commitment.

[19]We also note that the State's contention that Colusa's success would impair "the fulfillment of [the 1999 Compacts'] terms by all Compact tribes" is vitiated by its circular reasoning. If Colusa succeeds in its claim, it will obtain relief that will, by definition, "fulfill" the pre-payment term of the Compact. In other words, the only "fulfillment" that Colusa's claim, if successful, would impair is that of the *Commission's* current interpretation of the provision. The Compact Tribes, however, have no "legally protected" interest in the "fulfillment" of the *Commission's* particular interpretation of the Compact.

> "[i]nconsistent obligations" are not . . . the same as inconsistent adjudications or results. Inconsistent obligations occur when a party is unable to comply with one court's order without breaching another court's order concerning the same incident. Inconsistent adjudications or results, by contrast, occur when a defendant successfully defends a claim in one forum, yet loses on another claim arising from the same incident in another forum.

Delgado v. Plaza Las Americas, Inc., 139 F.3d 1, 3 (1st Cir. 1998) (per curiam) (footnote and citations omitted); *see also* § 19.03[4][d] (2008). We adopt the approach endorsed by the First Circuit. Accordingly, the possibility that the State may have to refund Colusa's pre-payment fees while adhering to a different interpretation of the Compact in its dealings with some other tribes does not, without more, rise to the level of creating a "substantial risk" of incurring "inconsistent obligations." Fed. R. Civ. P. 19(a)(1)(B)(ii).

The Commission's Authority to Conduct Rounds of Draws

Colusa finally argues that the Commission lacks authority under the compact unilaterally to conduct draws of gaming device licenses. As relief, Colusa requests a declaration that the Commission "has no authority under the Compact unilaterally to administer the system established under the Compact for the issuance of Gaming device licenses, but only to do so in consultation with the Tribe." The district court concluded that, if Colusa "prevailed, the relief would deprive absent parties of their legal entitlements to the licenses awarded pursuant to an invalid process." We reverse the district court's determination because it is contrary to our decision in *Makah*.

[9] In *Makah,* we held that the absent tribes were not required parties to the adjudication of the plaintiff tribe's "procedural claims"-its claim that the harvest quotas imposed by the Secretary of Commerce "were the product of commitments made outside the administrative process." *Makah,* 910 F.2d at 557 (internal quotation marks omitted). We reasoned that "[t]he absent tribes would not be prejudiced because all of the tribes have an equal interest in an administrative process that is lawful." *Id.* at 559. In so holding, we also made clear that Rule 19 required "the scope of the relief available to the Makah on their procedural claims [to be] narrow" and limited to prospective relief. *Id.* We find this reasoning dispositive in this case as well. Much like their counterparts in *Makah,* the absent tribes "have an equal interest in an administrative process that is lawful," *id.*—that is, that the Commission not conduct the draws of licenses *ultra vires.* Moreover, as we have already made clear, Rule 19 necessarily confines the relief that may be granted on Colusa's claims to remedies that do not invalidate the licenses that have already been issued to the absent Compact Tribes. *See Makah,* 910 F.2d at 559. Thus, we reverse the district court's dismissal of Colusa's fourth claim, albeit with the proviso that, were Colusa to prevail on the merits, no existing license may be invalidated at the remedial stage.[20]

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[20] We reject the State's contention that, if Colusa prevailed in establishing its fourth claim, the existing licenses would necessarily be void *ab initio.* It is true that, in *Lockyer v. City and County of San Francisco,* the Supreme Court of California held that marriage licenses issued by the City of San Francisco to same-sex couples in violation of state law were "void and of no legal effect from their inception." 33 Cal. 4th 1055, 1113 (2004). In that case, however, the Supreme Court of California emphasized the "unusual, perhaps unprecedented, set of circumstances" surrounding the invalidation of the marriage licenses in question. *Id.* Moreover, in reaching its conclusion, the court relied exclusively on the relevant provisions of California's Family Code and on case law addressing specifically marriages

(continued...)

CONCLUSION

We affirm the district court's judgment dismissing Colusa's claim for failure to negotiate in good faith. We reverse the district court's judgment dismissing Colusa's other claims on the pleadings, and remand for further proceedings consistent with this opinion. Colusa is entitled to its costs on appeal.

AFFIRMED IN PART; REVERSED AND REMANDED IN PART.

(...continued)
celebrated in violation of state law. *Id.* at 111314. Thus, *Lockyer* is not controlling. The parties have directed our attention to no other case-and we could find none-in support of the proposition that, under California law, the district court may not limit relief to future conduct if Colusa prevailed on the merits of its claim.

APPENDIX – F

APPENDIX F

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

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CACHIL DEHE BAND/OF WINTUN INDIANS OF THE COLUSA INDIAN COMMUNITY, a federally recognized Indian Tribe,

Plaintiff,

v.

STATE OF CALIFORNIA; CALIFORNIA GAMBLING CONTROL COMMISSION, an agency of the State of California; and ARNOLD SCHWARZENEGGER, Governor of the State of California,

Defendants.
_____/

No. CIV. S-04-2265 FCD KJM

MEMORANDUM AND ORDER

(Filed May 16, 2006)

This matter is before the court on defendants' motion for judgment on the pleadings.[1] Plaintiff

[1]Plaintiff also moves for a modification of the Pretrial Scheduling Order ("PSO") for the court to hear its motion for summary judgment on its first four claims for relief. However, for the reasons set forth herein, plaintiff's motion to modify the PSO is DENIED as moot.

(continued...)

opposes defendants' motion. For the reason's set forth below, defendants' motion is GRANTED.

BACKGROUND

Plaintiff, Cachil Dehe Band of Wintun Indians of the Colusa Indian Community (the "Tribe"), is an American Indian Tribe with a governing body duly recognized by the Secretary of the Interior. (Pl.s' Compl., filed Oct. 25, 2004, ¶ 2). The Tribe entered into a Class III Gaming Compact (the "Compact") with the State of California (the "State") in 1999. (*Id.* ¶ 24). At the same time, 56 other tribes (the "Compact Tribes") also executed virtually identical compacts with the State. (*Id.; see Artichoke Joe's California Grand Casino v. Norton*, 353 F.3d 712, 717-18 (9th Cir. 2003); *Artichoke Joe's California Grand Casino*, 216 F. Supp. 2d 1084, 1094 (E.D. Cal. 2002)).

The Compact sets forth various provisions relating to the operation of Class III Gaming Devices. The Compact sets the limit of the amount of Gaming Devices operated by each individual tribe at 2,000. (Compl. ¶ 14; Tribal-State Compact between the State of California and the Colusa Indian Community ("Compact"), attached as Ex. 1 to Defs.' Request for Judicial Notice, § 4.3,2.2).[2] The Compact

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(...continued)

Plaintiff also submitted three declarations in support of its opposition to defendants' Rule 12(c) motion. Because this matter is before the court on a motion for judgment on the pleadings, consideration of material outside the pleadings, except for those properly considered pursuant to judicial notice, is not appropriate. *See Hal Roach Studios, Inc. v. Richard Feiner&Co., Inc.*, 896 F.2d 1549, 1550 (9th Cir. 1990). The court will not consider this motion as a motion for summary judgment.

[2]The court takes judicial notice of the Compact. Fed.R. Civ. Proc. 201; Cal. Gov't Code § 12012.25 (ratifying the 1999 Compacts).

(continued...)

also sets a statewide maximum on the number of Gaming Devices that all Compact Tribes may license in the aggregate.[3] (*Id.*) Gaming Device licenses are distributed among all the 1999 Compact Tribes pursuant to the license draw process provided by the Compact. (Compact § 4.3.2.2). Tribes are awarded licenses based upon the tribe's placement in one of five priority tiers. (*Id.*) Placement in a particular tier is based upon the number of Gaming Devices operated by the tribe. (*Id.*) On or about March 31, 2001, then-Governor Gray Davis issued Executive Order D-31-01 in which he declared that the California Gambling Control Commission ("CGCC") shall control gaming device licensing. (Compl. ¶ 18) Prior to that date, a tribal draw administrator conducted gaming device license draws.(*Id.* ¶ 16). In June 2002, the CGCC declared that the licenses issued in those draws were invalid and that they would be replaced by licenses issued by the CGCC. (*Id.* ¶ 21).

The Compact also provides for revenue sharing with non-gaming tribes. The Compact sets forth that a tribe may acquire and maintain additional Gaming Device licenses by paying annual fees in accordance with a fee schedule and by paying, for each Gaming Device license, "a non-refundable one-time pre-payment fee" in the amount of $1,250 for each Gaming Device being licensed. (*Id.* ¶ 14). The monies are to be received, deposited, and distributed from the Revenue Sharing Trust Fund ("RSTF"), a fund created by the Legislature and administered by the CGCC as trustee. (Compact § 4.3.2). For purposes of revenue sharing, the Compact defines a Compact Tribe as a tribe having a compact with the State authorizing Class III Gaming; Non-Compact Tribes are defined as federally-recognized tribes that are

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(...continued)

[3]The statewide cap is calculated pursuant to a formula provided in § 4.3.2.2 of the Compact.

operating fewer than 350 Gaming Devices, whether or not such a tribe has a Compact with the State. (Compl. ¶ 10; Compact § 4.3.2(a)(1)). The revenue sharing provisions of the Compact provide that Non-Compact Tribes shall receive $1.1 million per year, unless there are insufficient funds, in which case, the available monies in the RSTF shall be distributed in equal shares to the Non-Compact Tribes (the "RSTF-eligible Tribes"). (Compact § 4.3.2.1). The CGCC interpreted that the non-refundable, one-time pre-payment fee could be used as a credit toward annual license fees and that no annual fees would be required for the first 350 licenses issued to a tribe. (Compl. ¶ 21).

Section 9 of the Compact also establishes a procedure to be followed in the event of a dispute relating to the Compact. The parties are to meet and confer in good faith not later than 10 days after one party gives the other party notice of the existence of a dispute. (*Id.* ¶ 33). If the dispute is not resolved within 30 days after the first meeting, either party may seek to have the dispute resolved by an arbitrator or a federal district court, or if the district court declines jurisdiction, any State court of competent jurisdiction. (*Id.*)

In 2002, the CGCC notified plaintiff and other Compact Tribes that the CGCC would conduct a round of Gaming Device license draws in September 2002. (*Id.* ¶ 22). Prior to the draw, and as of September 1, 1999, the Tribe was operating 523 Gaming Devices. (*Id.* ¶ 28). The Tribe notified the CGCC of its intent to draw 250 licenses and tendered a check in the amount of $312,500 as the non-refundable one-time pre-payment fee. (*Id.* ¶ 22). The Tribe was placed in the third priority tier and received 250 licenses. (*Id.* ¶ 28). In November 2003, the CGCC notified the Tribe that another round of draws, in which 750 licenses would be available to be drawn, would be conducted on December 19, 2003. (*Id.* ¶ 27). Plaintiff requested 377 licenses and submitted a pre-payment of $471,250. (*Id.* ¶ 32). The

Tribe was assigned to the fourth priority tier and received no licenses. (*Id.* ¶¶ 31-32). The CGCC refunded the pre-payment of $471,250 in full. (*Id.* ¶ 32). On October 21, 2004, the CGCC conducted another draw, in which the Tribe, placed in the fourth priority tier, pre-paid fees for 341 licenses and received only 73. (*Id.* ¶ 31). The Tribe anticipates receiving a refund of the pre-payment on the licenses that it did not receive in the draw. (*Id.* ¶ 32).

On December 30, 2003, the Tribe wrote to Governor Schwarzenegger to request that the State meet and confer with the Tribe about (1) the assignment of the Tribe to the fourth priority tier in the December 19, 2003 round of draws; (2) the CGCC's determination of the number of licenses available for issuance; (3) the CGCC's role and authority in the draw process; and (4) the CGCC's retention of the $312,500 tendered by the Tribe in connection with its draw of 250 Gaming Device licenses in September 2002. (*Id.* ¶ 34). A meeting took place on February 3, 2004. (*Id.* ¶ 35). No agreement was reached on any of the issues the Tribe raised. (*Id.* ¶ 36). By letter dated February 23, 2004, the State formally rejected" each of the Tribe's positions. (*Id.*)

On October 25, 2004, plaintiff filed a complaint in this court, alleging violations of the Compact. Plaintiff asserts that defendants violated the Compact by: (1) excluding the Tribe from participating in the third priority tier in the December 19, 2003 round of draws; (2) unilaterally determining the number of Gaming Device licenses authorized by § 4.3.2.2 (a)(1) of the Compact; (3) failing to refund money paid pursuant to the non-refundable one-time pre-payment fee set forth in § 4.3.2.2(e) of the Compact; (4) CGCC conducting rounds of draws of Gaming Device licenses without authority; and (5) failing to negotiate in good faith.[4]

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[4]Plaintiff also asserts that. the State is violating its (continued...)

On March 28, 2006, defendants filed this motion for judgment on the pleadings, seeking to dismiss plaintiff's first second, third, and fourth claims for relief for failure to join necessary and indispensable parties and plaintiff's fifth claim for relief for failure to exhaust non-judicial remedies.

STANDARD

Rule 12(c) of the Federal Rules of Civil Procedure provides in relevant part:

> After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.

In considering a motion for judgment on the pleadings, the standard applied by the court is virtually identical to the standard for dismissal for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6). *Fajardo v. City of Los Angeles*, 179 F.3d 698, 699 (9th Cir. 1999).

A claim will not be dismissed "unless it appears beyond doubt that plaintiff can prove no set of facts in support of his [or her] claim that would entitle him [or her] to relief." *Yamaguchi v. Dep't of the Air Force*, 109 F.3d 1475, 1480 (9th Cir. 1997) (quoting *Lewis v. Tel. Employees Credit Union*, 87 F.3d 1537, 1545 (9th Cir. 1996)). "All allegations of material fact are taken as true and construed in the light most favorable to the nonmoving party." *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996).

Given that the complaint is construed favorably to' the pleader, the court may not dismiss the claim unless it appears beyond a doubt that the plaintiff

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(...continued)
obligations under the Indian Gaming Regulatory Act of 1988 ("IGRA") by failing to negotiate in good faith. (Compl. ¶ 58).

can prove no set of facts in support of the claim which would entitle him or her to relief. *Conley v. Gibson*, 355 U.S. 41, 45 (1957); *NL Indus., Inc. v. Kaplan*, 792 F.2d 896, 898 (9th Cir. 1986).

Nevertheless, it is inappropriate to assume that plaintiff "can prove facts which it has not alleged or that the defendants have violated the ... laws in ways that have not been alleged." *Associated Gen. Contractors of Cal., Inc. v. California State Council of Carpenters*, 459 U.S. 519, 526 (1983). Moreover, the court "need not assume the truth of legal conclusions cast in the form of factual allegations." *United States ex rel. Chunie v. Ringrose*, 788 F.2d 638, 643 n.2 (9th Cir. 1986).

In ruling upon a motion for judgment on the pleadings, the court may consider only the complaint, any exhibits thereto, the responsive pleading, and matters which may be judicially noticed pursuant' to Federal Rule of Evidence 201. *See Mir v. Little Co. Of Mary Hosp.*, 844 F.2d 646, 649 (9th Cir. 1988); *Isuzu Motors Ltd. v. Consumers Union of United States, Inc.*, 12 F. Supp. 2d 1035, 1042 (C.D. Cal. 1998).

ANALYSIS

I. Rule 19 Joinder

Defendants assert that plaintiff's first four claims should be dismissed for failure to join necessary and indispensable parties. Rule 19(a) provides for joinder of necessary and indispensable parties. To determine if a party is necessary and indispensable to a suit, the court must (1) determine whether the absent party is a "necessary" party, and (2) if the absent party is necessary, but joinder is not feasible, whether the party is "indispensable." *Kescoli v. Babbit*, 101 F.3d 1304, 1309 (9th Cir. 1996). The moving party bears the burden of persuasion. *See Makah Indian Tribe v. Verity*, 910 F.2d 555, 558 (9th Cir. 1990).

A. Necessary Party

To determine whether a party is necessary to an action, the court must undertake another two-part analysis. *Makah*, 910 F.2d at 558. Rule 19 (a) (1) provides that a person is a necessary party where "in the person's absence complete relief cannot be accorded among those already parties. Fed. R. Civ. Proc. 19(a). Rule 19 (a)(2) provides that a person is also a necessary party where

> the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring, double, multiple or otherwise inconsistent obligations by reason of the claimed interest.

Id. The interest referenced in Rule 19 (a)(2) must be a legally protectable interest in the suit, more than a financial stake and more than speculation about a future event. *Makah*, 910 F.2d at 558. However, a fixed fund or a finite amount of resources which a court is asked to allocate may create a protectable interest in beneficiaries of the fund. *Id.* (citing *Wichita & Affiliated Tribes of Oklahoma v. Hodel*, 788 F.2d 765, 774 (D.C. Cir. 1986). Interests arising from terms in bargained contracts are also legally protectable. *Am. Greyhound Racing, Inc. v. Hull*, 305 F.3d 1015, 1023 (9th Cir. 2002).

Defendants argue that all 1999 Compact Tribes and RSTF- eligible Tribes, which have not been joined, are necessary parties to the current suit. Defendants assert that these tribes have a legally protectable interest in the litigation that will be practically impaired by a favorable judgment to

plaintiff and that the disposition of this matter would subject the State to inconsistent obligations.

At issue in plaintiff's first and second claims for relief is the validity of the State and CGCC's interpretation of the clauses set forth in § 4.3.2.2 of the Compact, addressing participation in Gaming Device license draws and the authorized number of Gaming Device licenses. As relief for its first and second claims, plaintiff asks the court to grant various forms of declaratory relief and to order the CGCC to issue 377 Gaming Device licenses to the Tribe.[5] (Compl., Prayer for Relief at 17-18). There is a statewide limit on the number of gaming licenses that all Compact Tribes in the aggregate may receive. (Compl. ¶ 14). As such, plaintiff requests the court allocate licenses from a finite number of available licenses. An order to issue any additional licenses to plaintiff would necessarily and practically impair the rights of the other Compact Tribes who would be deprived of those licenses or the opportunity to obtain those licenses. Accordingly, all Compact Tribes are necessary parties to plaintiff's first and second claims for relief. *See Makah*, 910 F.2d at 558-59.

Plaintiff's third claim for relief involves the Tribe's one-time pre-payment of $1,250 for each Gaming Device license that the Tribe draws. Because the CGCC determined that this one-time pre-payment is to be credited against the annual license fees due on Gaming Device licenses, and because the Tribe does not owe any annual license fees, plaintiff seeks a refund of the $403,750 it has paid. The funds collected through the one-time pre-payment is deposited in the RSTF. (Compl. ¶ 16). The Compact provides that each Non-Compact Tribe shall receive

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[5] Specifically, plaintiff asks the court to declare that CGCC has a ministerial duty immediately to issue 377 licenses and to enjoin the State from declining immediately to issue 377 licenses.

distribution from the RSTF, either in the amount of $1.1 million per year, or if there are insufficient monies for this sum, any available monies in the RSTF shall be distributed to Non-Compact Tribes in *equal shares.* (Compact § 4.3.2.1(a)). Any excess monies left in the fund after distribution remain in the RSTF for disbursement in future years. *Id.* Therefore, an award of a refund to plaintiff will practically impair the rights of Non-Compact, RSTF-eligible Tribes because the return of any RSTF monies will lessen the amount of money in the fund for reimbursement to those other tribes. In other words, to the extent that there is insufficient money to pay each non-Compact Tribe $1.1 million, an award to plaintiff will lessen the amount of money distributed to each other tribe. To the extent that there is sufficient money to pay each Non-Compact tribe $1.1 million, an award to plaintiff decreases the funds available for disbursement the following year. Therefore, the interests of the Non-Compact, RSTF-eligible Tribes will be practically impaired by the relief sought by plaintiff. As such, the Non-Compact, RSTF-eligible Tribes are necessary parties to plaintiff's third claim for relief.

Plaintiff's fourth claim for relief alleges that CGCC lacks authority to conduct rounds of draws for Gaming Device licenses. If the court were to grant plaintiff's requested relief and declare that CGCC lacked authority to administer the Gaming Device license draws, the CGCC would be unable to conduct further draws and all previously issued licenses would be invalidated. As a result, other Compact Tribes would not be able to draw any available licenses in the future. Further, the licenses distributed to other Compact Tribes in previous draws would be meaningless. Thus, the interests of other Compact Tribes would he practically impaired by the relief sought by plaintiff. *See Am. Greyhound,* 305 F.3d at 102 (holding that all tribes were necessary parties to declaratory judgment that gaming operations were unlawful because the judicial determination would affect the tribes'

interest as a practical matter). Accordingly, all Compact Tribes are necessary parties to plaintiff's first and second claims for relief.

Further, the relief sought by plaintiff, if granted, would leave defendants subject to a substantial risk of inconsistent obligations. While plaintiff asserts that the Compact between the Tribe and defendants is a bilateral contract, it is, in reality, one of many virtually identical Compacts. *See Artichoke Joe's,* 353 F.3d at 717. To the extent that plaintiff asserts that it seeks the court to rule only on the interpretation of its "bilateral agreement" with defendants, any interpretation could result in defendants requirement to perform in one manner under plaintiff's contract and in a directly incongruous manner under the other virtually identical contracts. For example, if plaintiff prevailed on its fourth claim of relief, CGCC would not have authority to administer Gaming Device license draws under its contract, but would have authority to administer Gaming Device license draws under the other Compacts. Accordingly, all 1999 Compact Tribes are necessary parties to plaintiff's first four claims for relief.

B. Indispensable Party

Rule 19(b) sets forth the standard to apply when joinder of necessary parties is not feasible. In this case, joinder of the 1999 Compact Tribes and RSTF-eligible Tribes is not feasible because each of these tribes is immune from suit under the common law doctrine of tribal sovereign immunity. *Kiowa Tribe of Oklahoma v. Mfg. Technologies, Inc.*, 523 U.S. 751, 754 (1998) ("As a matter of federal law, an Indian tribe is subject td suit only where Congress has authorized the suit or the tribe has waived its immunity.").

Rule 19(b) provides that if a necessary party cannot be joined, "the court shall determine whether in equity and good conscience the action should

proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable." FED. R. CIV. PROC. 19(b). In making this determination, the court undertakes a four-part analysis, looking at (1) the prejudice to any party resulting from a judgment; (2) whether the court can shape relief to lessen prejudice to absent parties; (3) if an adequate remedy, even if not complete, can be awarded without the absent party; and (4) whether an alternative forum is available. to the plaintiff. *Id.; Makah*, 910 F.2d at 560.

Defendants assert that the absent tribes will be prejudiced by plaintiff's requested relief. "Not surprisingly, the first factor of prejudice, insofar as it focuses on the absent party, largely duplicates the consideration that made a party necessary under Rule 19(a)." *Am. Greyhound*, 305 F.3d at 1024-25 (citations omitted). To the extent that plaintiff seeks the award of additional gaming device licenses, that award would come at the expense of the absent tribes because of the finite nature/of the gaming devices that all tribes may license. To the extent that plaintiff seeks a refund of its pre-payment, the relief would prejudice the RSTF-eligible Tribes because it would lessen the amount of money in the fund to be distributed on an equal basis. Finally, to the extent plaintiff asks the court to declare that CGCC does not have authority to conduct the gaming license draws, the relief would prejudice those Compact Tribes who would seek licenses in a future draw as well as Compact Tribes who were previously awarded licenses in the draw system. Plaintiff cannot adequately represent the absent tribes because of the potential intertribal conflicts over the rights to the limited number of gaming devices and licenses. See *Makah*, 910 F.2d at 560. Thus, the relief sought by plaintiff would prejudice the absent tribes.

Defendants argue that the prejudice cannot be lessened or avoided through shaping the relief. Plaintiff argues that the court lessen or avoid the prejudice through ordering the issuance of an

additional 24,800 licenses, such that the absent tribes would also receive all licenses previously requested in the draw process. This does not take into account the interests of Compact Tribes that may be opposed to the state's award of more gaming device licenses, specifically those in close geographical proximity to plaintiff, whose market share of class III gaming would be affected by the inundation of licenses. Therefore, because any relief would be detrimental to either plaintiff or the absent tribes, the court has no way to shape the relief to lessen or avoid prejudice. *See Makah*, 910 F.2d at 560. Similarly, the only "adequate« remedy would be at the cost of the absent parties. *See Id.*

Finally, defendants argue that plaintiff would have an alternative forum in which to seek relief. Defendants assert that the Compact provides that the terms and conditions of the contract may be amended by the mutual and written agreement of the parties, (Compact § 12.1), and that plaintiff is free to request re-negotiation of its 1999 Compact with the State. However, plaintiff is left without a judicial forum in which to bring suit against defendants. The Ninth Circuit has held that this factor is not one to be dispensed with lightly. *Manybeads v. United States*, 209 F.3d 1164, 1166 (9th Cir. 2000) However, the Ninth Circuit has also recognized the importance of tribal sovereign immunity, which may leave a party with no forum for its claim. *See Wilbur v. Locke*, 423 F.3d 1101, 1115 (9th Cir. 2005) (finding the absent Indian tribe indispensable despite the lack of an alternative forum); *Manybeads*, 209 F.3d at 1166 (same); *Makah*, 910 F.2d at 560 (same). Therefore, a balance of the four factor analysis supports the determination that the Compact Tribes and the RSTF-eligible Tribes are indispensable parties pursuant to Rule 19(b).

C. Public Rights Exception

Plaintiff contends that this case falls within the "public rights" exception to joinder rules.[6] "Under this exception, even if the [t]ribes are necessary parties, they are not deemed indispensable and, consequently, dismissal is not warranted." *Kescoli v. Babbitt,* 101 F.3d 1304, 1311 (9th Cir. 1996); *Makah,* 910 F.2d at 559 n.6. Generally, to qualify for the public rights exception, "the litigation must transcend the private interests of the litigants and seek to vindicate a public right." *Id.* (citing *Kickapoo Tribe of Indians v. Babbitt,* 43 F.3d 11491, 1500 (D.C. Cir. 1995). However, "although the litigation may adversely affect the absent parties' interests, the litigation must not 'destroy the legal entitlements of the absent parties.'"

Id. (quoting *Connor v. Burford,* 848 F.2d 1441, 1459 (9th Cir. 1988).

In its first and second claims for relief, plaintiff seeks the reallocation of Gaming Device licenses such that the Tribe will be awarded 377 additional licenses.[7] In its first claim, plaintiff seeks a determination that it should have been placed in the third priority tier instead of the fourth priority tier. This claim is a private one, focused on the merits of plaintiff's dispute regarding its placement in a specific priority tier. In its second claim, plaintiff

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[6]Plaintiff's argument that the public rights exception applies is somewhat disingenuous given that the majority of its opposition argues that all 1999 Compact Tribes or RSTF-eligible Tribes are not necessary parties to this action because plaintiff seeks to enforce its own rights under a bilateral contract.

[7]Although plaintiff relies heavily on *Makah,* in *Makah* the Ninth Circuit found that the reallocation of finite resources, in that case quotas on fishing rights, did not qualify for the public rights exception.

seeks a determination that the statewide cap determined by the State is void. This claim is also a private one, seeking the court to determine that a larger total of Gaming Device licenses is allowed, such that plaintiff may be awarded the licenses it seeks. Finally, plaintiff's third claim of relief seeks a refund of moneys paid into the RSTF. This claims seeks adjudication of plaintiff's right to specific monetary relief, not a determination of a public right. Therefore, plaintiff's first, second, and third claims for relief do not seek to vindicate a public right, but rather to advance plaintiff's private interests in receiving more Gaming Devices and a refund of its pre-payment for licenses previously received.

Plaintiff's fourth claim of relief alleges that the CGCC is not authorized to administer the Gaming Device license draws. This claim may seek to vindicate a public right in ensuring that a lawful procedure is followed in the future.[8] As such, the claim may be closer akin to the vindication of a public right approved of in *Makah,* ensuring an agency's future compliance with statutory procedures, than plaintiff's other challenged claims. *Makah,* 910 F.2d at 559. However, if plaintiff prevailed, the relief would deprive absent parties of their legal entitlements to the licenses awarded pursuant to an invalid process. *See Kescoli,* 101 F.3d at 1312. Because the process by which the licenses were procured was invalid, the licenses could be rendered meaningless.

In view of the *essentially* private nature of the present litigation and the significant threat to the Compact Tribes' interests, the application of the

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[8]However, the court remains skeptical, given the tenor of plaintiff's first three claims for relief, whether plaintiff's challenge to CGCC's authority is merely a pretext for vindicating its private grievance that it was not awarded the requested licenses through CGCC's draw process.

public rights exception is not appropriate in this case. *See Id.* Defendants' motion for judgment on the pleadings regarding plaintiff's first, second, third, and fourth claims for relief is GRANTED for failure to join necessary and indispensable parties.

II. Failure to Exhaust Non-Judicial Remedies

Defendants contend that the Tribe's fifth claim for relief is jurisdictionally deficient because the Tribe has not satisfied two preconditions to its right to sue the State. First, defendants assert that the Tribe has not exhausted the meet and confer provision set forth in § 9.1 of the Compact. Second, defendants contend that the Tribe has not given the State notice and opportunity to cure any alleged breach as required by §11.2.1 of the Compact.

Plaintiff's fifth claim for relief alleges that defendant failed to negotiate in good faith after the state requested renegotiation of §§ 4.3.1-4.3.2 of the Compact. (Compl. ¶ 60). Section 9.1 of the Compact provides that "the parties establishe[d] a threshold requirement that disputes between the Tribe and the State first be subjected to a process of meeting and conferring in good faith." (Compact § 9.1). Plaintiff's complaint does not allege that the Tribe met and conferred with the State in regards to its claim of failure to negotiate in good faith. In its opposition, plaintiff admits that it did not meet and confer, but argues that it did not exhaust the § 9.1 dispute resolution process, because exhaustion would be futile. However, plaintiff did not allege in its complaint that the dispute resolution process would be futile, nor did it allege facts that would support this argument.[9] Further, plaintiff asserts that the

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[9] Plaintiff presented some related facts through a declaration submitted with plaintiff's opposition. As stated previously, the court will not consider documents outside of the pleadings, except those judicially noticed, on defendants' Rule

(continued...)

Tribe has requested that the State meet and confer and that a meeting was set for April 27, 2006. Because plaintiff failed to exhaust the meet and confer requirement set forth in § 9.1 of the Compact prior to filing suit in this court and because plaintiff has not sufficiently alleged that such exhaustion is futile, defendant's motion for judgment on the pleadings regarding plaintiff's fifth claim for relief is GRANTED.

In its opposition, plaintiff requests that the court allow plaintiff to supplement its Complaint to allege exhaustion of the meet and confer process under § 9.1 of the Compact. However, plaintiff has not filed a motion to amend the Pretrial Scheduling Order pursuant to Rule 16,[10] nor has plaintiff filed a motion to amend or supplement the pleadings pursuant to Rule 15. Further, plaintiff has presented no evidence that the meet and confer process has *been* exhausted. Rather, defendants assert that the meet and confer process will not be exhausted until May 27, 2006. As such, the court does not give plaintiff leave to amend or supplement its complaint.

CONCLUSION

For the reasons stated above, defendants' motion for judgment on the pleadings is GRANTED. Plaintiff's first, second, third, and fourth claims for relief are dismissed for failure to join necessary and indispensable parties. Plaintiff's fifth claim for relief is dismissed for failure to exhaust non-judicial remedies. The Clerk of the Court is directed to close this file.

(...continued)
12(c) motion.

[10]The Pretrial Scheduling Order, filed May 20, 2005, provides that "No further . . . amendments to pleadings is permitted without leave of court, good cause having been shown."

IT IS SO ORDERED.

DATED: May 16, 2006

/s/ Frank C. Damrell Jr.
FRANK C. DAMRELL, JR.
United States District Judge

APPENDIX – G

APPENDIX G

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RINCON BAND OF LUISENO MISSION INDIANS OF THE RINCON RESERVATION, A/K/A Rincon San Luiseno Band Of Mission Indians a/k/a Rincon Band Of Luiseno Indians, Plaintiff - Appellant, v. ARNOLD SCHWARZENEGGER, Governor Of California; WILLIAM LOCKYER, Attorney General of California; STATE OF CALIFORNIA, Defendants – Appellees.	No. 06-55259 D.C. No. CV-04-01151-TJW MEMORANDUM * (Filed Aug. 8, 2008)

Appeal from the United States District Court for the Southern District of California Thomas J. Whelan, District Judge, Presiding

Argued and Submitted
April 9, 2008, Pasadena, California

*This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3

Before: CANBY, KLEINFELD, and BYBEE, Circuit Judges.

The Rincon Band of Luiseno Mission Indians ("Rincon") brought this action against the governor of California[1] ("the State") seeking, *inter alia,* reliance damages and a declaratory judgment regarding the aggregate maximum number of slot machine licenses available to Indian tribes in California who were parties to approximately 60 essentially identical Indian Gaming Compacts between those tribes and the State. The district court dismissed several of Rincon's claims, including these two. It dismissed the declaratory judgment action for failure to join all other tribes with similar compacts, who were subject to the same licensing pool, as required parties under Federal Rule of Civil Procedure 19. It dismissed the claim for damages as barred by the Eleventh Amendment of the U.S. Constitution. A partial final judgment was entered on the dismissed claims pursuant to Federal Rule of Civil Procedure 54(b). Rincon brings this appeal to challenge the dismissal of the declaratory judgment and reliance damage claims. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm in part and reverse in part.

We review for abuse of discretion a dismissal under Rule 19 for failure to join a required party. *See Dawavendewa v. Salt River Project,* 276 F.3d 1150, 1154 (9th Cir. 2002). We review de novo legal conclusions underlying the court's decision. *See Disabled Rights Action Comm. v. Las Vegas Events, Inc.*, 375 F.3d 861, 879 (9th Cir. 2004). De novo review may therefore extend to determinations of whether a third party's interests would be impaired

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[1] Originally, California Attorney General William Lockyer was also named as a defendant. Rincon conceded at the district court that Lockyer did not need to be a party to the litigation, and the district court dismissed the claims against him.

within the meaning of the joiner rules, if that determination decided a question of law. *Am. Greyhound Racing, Inc. v. Hull,* 305 F.3d 1015, 1022 (9th Cir. 2002). Immunity under the Eleventh Amendment presents questions of law reviewed de novo. *See Cholula Ready Mix, Inc. v. Civic,* 382 F.3d 969, 973 (9th Cir.2004).

Rincon's declaratory judgment claim challenging the State's calculation of the maximum number of licenses in the 1999 Compact pool presents an issue identical to one addressed in *Cachil Dehe Band of Wintun Indians v. California,* No. 06-16145 (August 8, 2008), filed contemporaneously with this memorandum disposition. In *Cachil Dehe Band,* we held that an Indian tribe that is party to a 1999 Compact with California may proceed to litigate the size of the total license pool without joining other compacting tribes, because those tribes have no protectable interest in the size of the license pool that qualifies them as required parties within the meaning of Rule 19(a). That ruling controls the present appeal of Rincon's declaratory judgment claim. Accordingly, we reverse the decision of the district court and remand this claim for further appropriate proceedings.

We affirm the district court's dismissal of Rincon's action for reliance damages against the State. A waiver of Eleventh Amendment immunity requires "the most express language or ... overwhelming implications ... as will leave no room for any other reasonable construction." *Edelman v. Jordan,* 415 U.S. 651, 673 (1974) (internal quotation marks, citations and alterations omitted). Rincon identifies no such waiver applicable here. The Compact does not waive the State's immunity from collateral damages actions. This damages action does not arise out of a breach of the Compact, so it falls outside the statutory waiver for actions "arising from ... the state's violation of the terms of any Tribal-State compact to which the state is or may become a party." Cal. Gov't Code § 98005, *upheld by Hotel*

Employees & Restaurant Employees Int'l Union v. Davis, 981 P.2d 990 (Cal. 1999). Therefore, the Eleventh Amendment bars the action. We affirm the district court's dismissal of this claim.

The parties shall bear their own costs on appeal.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

APPENDIX – H

APPENDIX H

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RINCON BAND OF LUISENO MISSION INDIANS OF THE RINCON RESERVATION, A/K/A Rincon Luiseno Band of Mission Indians A/K/A Rincon Band of Luiseno Indians, Plaintiff - Appellant, v. ARNOLD SCHWARZENEGGER, Governor of California; WILLIAM LOCKYER, Attorney General of California; STATE OF CALIFORNIA, Defendants - Appellees.	Case No. 06-55259 D.C. NO. CV-04-01151-TJW ORDER (Filed Nov. 14, 2008)

Before: CANBY, KLEINFELD, and BYBEE, Circuit Judges.

The motion of the Bands of Mission Indians to file an amici brief in support of appellees' petition for panel rehearing and petition for rehearing en banc is

GRANTED. The amici brief is ordered filed. No response need be filed.

The panel has unanimously voted to deny the petition for panel rehearing. Judges Kleinfeld and Bybee have voted to deny the petition for rehearing en banc, and Judge Canby has so recommended.

The petition for en banc rehearing has been circulated to the full court, and no judge of the court has requested a vote on the petition for rehearing en banc. Fed. R. App. P. 35(b).

The petition for panel rehearing and the petition for rehearing en banc are DENIED.

APPENDIX – I

APPENDIX I

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

RINCON BAND OF LUISENO MISSION INDIANS OF THE RINCON RESERVATION, Plaintiff, v. ARNOLD SCHWARZENEGGER; WILLIAM LOCKYER; STATE OF CALIFORNIA, Defendants.	Case No. 04-CV-01151 W **ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR RECONSIDERATION** (Filed Mar. 22, 2005)

Plaintiff Rincon Band of Luiseno Mission Indians ("Plaintiff") move for reconsideration of a portion of this Court's September 21, 2004 order dismissing this action. Plaintiff asserts that the Court should have retained jurisdiction over several dismissed claims pursuant to 28 U.S.C. §§ 1331 and 1362. Defendants Arnold Schwarzenegger, William Lockyer, and the State of California ("Defendants") oppose. All parties are represented by counsel. The Court decides the matter on the papers submitted and without oral argument pursuant to Civil Local Rule 7.1(d.1). For the reasons set forth below, the Court GRANTS in part and DENIES in part Plaintiff's reconsideration motion.

I. BACKGROUND

The background of this case is well known to the parties and is more fully set forth in this Court's September 21, 2004 Order ("September 21 Order") dismissing two of Plaintiff's claims for failure to join a necessary and indispensable party. In its September 21 Order this Court also declined to exercise supplemental jurisdiction under 28 U.S.C. § 1367 to consider Plaintiff's remaining claims, consisting of various breach of contract claims. As no claims remained, the Court dismissed the action in its entirety.

On October 5, 2004 Plaintiff moved for a new trial or for reconsideration of this Court's refusal to exercise supplemental jurisdiction over Plaintiff's contract claims.[1] Plaintiff now claims that this Court has jurisdiction over Plaintiff's breach of contract claims under 28 U.S.C. § 1331 and § 1362. Plaintiff does not seek reconsideration of this Court's dismissal of Plaintiff's first two claims for failure to join a necessary and indispensable party.

II. LEGAL STANDARD

Under Fed. R. Civ. P. 59(e), a federal district court has discretion to reconsider an order granting final judgment. *Sheet Metal Workers' Int'l Ass'n Local Union No. 359 v. Madison Indus., Inc., of Arizona*, 84 F.3d 1186, 1192 (9th Cir. 1996). A district court should generally leave a previous decision undisturbed absent a showing that it either represented clear error or would work a manifest injustice. *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 817 (1988). A district court may alter or amend a judgment under rule 59(e) only if the motion is filed no later than ten days after entry

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[1]Since they were filed within ten days of the September 21 Order, the Court will treat both of Plaintiff's motions as reconsideration motions under Rule 59(e).

of the judgment. Fed. R. Civ. P. 59(e). "Reconsideration [under Rule 59(e)] is appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law." *School Dist. No. 1J, Multnomah County v. ACandS Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993).

III. DISCUSSION

Having reviewed the parties' moving papers and the applicable law, the Court **GRANTS** Plaintiff's reconsideration motion. However, reviewing the record before it, and Defendants' original motion to dismiss, the Court concludes that Plaintiff's fifth and seventh claims must be **DISMISSED**.

A. THIS COURT HAS ORIGINAL FEDERAL JURISDICTION OVER PLAINTIFF'S CONTRACT CLAIMS

Due to an inadvertent legal error, this Court misinterpreted the federal jurisdictional limits of the compacts at issue. In its September 21 Order this Court concluded that Plaintiffs contract claims arose under state law and declined to exercise supplemental jurisdiction. Upon further review of the Indian Gaming Regulatory Act, 25 U.S.C. §2702, ("IGRA") and the applicable Ninth Circuit precedent, the Court agrees with Plaintiff that Claims involving Tribal-State compact interpretation fall within the original jurisdiction of the District Courts.

In *Gila River Indian Community v. Henningham, Durham. and Richardson* the Ninth Circuit held that there was "no reason ... to extend the reach of federal common law to cover all contracts entered into by Indian tribes. Otherwise the federal courts 20 might become a small claims court for all such disputes." 626 F.2d 708, 714 (9th Cir. 1980). IGRA, however, permits federal jurisdiction for contractual claims arising under Tribal-State

compacts. 25 U.S.C. §2702(7)(a)(l). In *Cabazon Band of Mission Indians v. Wilson*, the Ninth Circuit held that Tribal-State Compacts under IGRA were a creation of federal law and that district courts retain jurisdiction over Compact related contract claims pursuant to 28 U.S.C. §§ 1331 and 1362. *See Cabazon Band of Mission Indians v. Wilson*, 124 F.3d 1050, 1055~56 (9th Cir. 1997). Although IGRA only explicitly grants federal jurisdiction over Compact negotiation, the *Cabazon* court recognized that "it would be extraordinary were the statute to provide jurisdiction to entertain a suit to force the State to negotiate a compact yet provide no avenue of relief were the State to defy or repudiate that very compact." *Cabazon*, 124 F.3d at 1056.

Here, Plaintiff's third through eighth claims all directly relate to interpretation, enforcement or application of the 1999 Tribal-State Compacts under IGRA. *See (Complaint ¶¶ 121-46).* Each of these claims are founded on Defendants' alleged breaches of obligations arising directly from the Compact. Therefore, these claims were validly asserted under this Court's original jurisdiction and should not have been dismissed under 28 U.S.C. §1367.[2] *Cabazon*, 124 F.3d at 1056. Accordingly, the Court GRANTS Plaintiff's motion to reconsider its earlier ruling declining to exercise supplemental jurisdiction over these claims.

B. PLAINTIFF'S FIFTH AND SEVENTH CLAIMS MUST BE DISMISSED

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[2]Although Plaintiff's seventh claim is more loosely tied to the Compact at issue, the Court concludes that it is sufficiently related to arise under this Court's original jurisdiction. Alternatively, the Court exercises its discretion in light of its amended ruling and grants supplemental jurisdiction to claim seven under section 1367.

Although the Court has jurisdiction over Plaintiff's fifth and seventh claims, having reviewed the record and the parties' original briefing regarding Defendants' motion to dismiss, the Court concludes that Plaintiff's fifth and seventh claims must be dismissed.

1. PLAINTIFF'S FIFTH CLAIM MUST BE DISMISSED FOR FAILURE TO JOIN A NECESSARY AND INDISPENSIBLE PARTY

Plaintiff's fifth claim for relief seeks a declaratory judgment stating the correct number of gaming device licenses available under the 1999 Compacts. *(Complaint* ¶ 42). Defendants contend that this claim, like Plaintiff's first and second claims must be dismissed for failure to join the other 61 Tribes benefitting from the license pool *See (Def's Mot. Dismiss* at 20). Plaintiff opposes, offering nearly identical grounds to those this Court rejected regarding Plaintiff's first and second claims in its September 21 Order. For the reasons expressed in the September 21 Order and below, the Court concludes that Plaintiff's fifth claim must be dismissed for failure to join a necessary and indispensable party.

Rule 19(a) provides that parties are necessary if:

> 1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (I) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent

> obligations by reason of the claims interest.

FED. R. CIV. PROC. 19(a). Here, the other 61 tribes benefitting from the license pool certainly have an interest in any declaration this Court might make regarding the number of licenses available under the 1999 Compacts, in which all the tribes participate. *See* FED. R. CIV. PROC. 19(a)(2). However, any order this Court might issue would not preclude those tribes located outside of the Southern District of California from seeking declaratory relief on the same issue against the State in another forum, thereby raising the specter of Defendants being subject to inconsistent obligations. *Id.; United States v. Bowen*, 172 F3d 682, 688 (9th Cir. 1999).[3] Although Plaintiff may be correct that it adequately represents the other 61 tribe's interests regarding the license pool, absent their joiner Plaintiff certainly cannot protect *Defendants* from the very real possibility of inconsistent judgments regarding the number of available licenses. Thus, the other 61 tribes are necessary parties to Plaintiff's fifth claim and must be joined if feasible. FED. R. CIV. PROC. 19(a)(2)(ii).

As discussed in detail in the September 21 Order, the absent tribes cannot be joined.[4] This Court

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[3]Such potential inconsistent obligations are not merely a theoretical possibility - five non-compact tribes, proceeding as third-party beneficiaries, have already filed an action against the State in Sacramento Superior Court regarding their monetary interest in the Compact section at issue in this declaratory judgment claim. *See (Def. Mot. to Dismiss, Ex. B)*

[4] Although the September 21 Order focused on the joinder of the Five Tribes whose Compacts Plaintiff sought to invalidate, the same analysis applies to the other 61 Compact tribes. Even if the 56 tribes who have not appeared as *amici* in this action agreed to waive sovereign immunity, the five tribes who have appeared as *amici* have unequivocally refused to do

(continued...)

has already concluded that the tribes are entitled to sovereign immunity and that Congress did not waive that immunity under IGRA. *See (September 21 Order)*. The Court sees no reason to disturb that ruling here.

Likewise, the absent tribes are indispensable for reasons similar to those discussed in the September 21 Order. As discussed above, Defendants may be prejudiced in the absence of the other 61 tribes by facing the possibility of conflicting obligations regarding the number of available licenses. Moreover, relief cannot be shaped to lessen that prejudice. No matter what declaration this Court might issue there is no way for it to prevent other courts from issuing conflicting rulings. For the same reason, no adequate remedy is available in the other 61 tribes' absence. Finally, although there may not be an alternative forum available to Plaintiff, that factor alone is not dispositive. *See Dawavendewa v. Salt River Project*, 276 F.3d 1150, 1162 (9th Cir. 2002). The majority of the Rule 19(b) factors therefore lead this Court to conclude that the 61 absent tribes are indispensable parties to Plaintiff's fifth claim. As they cannot be joined, Plaintiff's fifth claim must be dismissed.

2. PLAINTIFF'S SEVENTH CLAIM IS BARRED BY THE ELEVENTH AMENDMENT

Plaintiff's seventh claim seeks $12,750,000 of damages against Defendants for allegedly breaching the 1999 Compact and requiring Plaintiff to build an unnecessary temporary gaming facility. Defendants contend that this claim is barred by the Eleventh Amendment. Plaintiff counters that California

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(...continued)
so. Thus, joinder of all necessary parties would remain impossible.

waived Defendants' Eleventh Amendment immunity. The Court disagrees.

The Eleventh Amendment to the U.S. Constitution grants sovereign immunity against "any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of a foreign state." U.S. Constitution Amendment XI. Claims against sovereign states in the federal courts are only permitted if the State waives its sovereign immunity. The Supreme Court has held "the test for determining whether a State has waived its immunity from federal-court jurisdiction is a stringent one." *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 241 (1985) (superseded on other grounds by statute). A State is "deemed to have waived its immunity only where stated by the most express language or by such overwhelming implication from the text as will leave no room for any other reasonable construction." *Atascadero*, 473 U.S. at 239-40 (internal quotations omitted). Federalism interests (require that such a waiver be clear and unequivocal." *Port Auth. Trans-Hudson Corp. v. Feeney*, 495 U.S. 299,305 (1990).

California Government Code § 98005 states in part:

> California also submits to the jurisdiction of the courts of the United States in any action brought against the state by any federally recognized California Indian tribe asserting any cause of action arising from the state's refusal to enter into negotiations with that tribe for the purpose of entering into a different Tribal-State compact pursuant to IGRA or to conduct those negotiations in good faith, the state's refusal to enter into negotiations concerning the amendment of a Tribal-State compact to which the state is a party, or to negotiate in good faith concerning

> that amendment, or the state's violation of the terms of any Tribal-State compact to which the state is or may become a party.

Id. Section 98005 was enacted through Proposition 5, a California ballot referendum on Indian gaming, subsequently struck down by the California Supreme Court in *Hotel Employees & Restaurant Employees Int'l Union v. Davis*, 21 Cal. 4th 585 (Cal. 1999). The *Hotel Employees* Court struck down the majority of Proposition 5, yet left the last sentence of the jurisdiction clause in Section 98005. *Id.* at 615.

Plaintiff argues that California waived its sovereign immunity for the purpose of the seventh claim for relief under section 98005. The Court respectfully disagrees.

Section 98005 permits federal court jurisdiction over Tribal-State compact claims pursuant to IGRA Claims involving Compact interpretation, injunctive and declaratory relief are properly brought in federal district court. However, nothing in Section 98005's text specifically waives the State's sovereign immunity against suits for monetary damages. Simply put, there is there is no "overwhelming implication from the text itself' that California submitted itself to federal jurisdiction for Tribal damage claims. *Atascadero*, 473 U.S. at 239-40 (1985).

Nor is there no other reasonable construction of the statute's language. *Id.* The history of section 98005 suggests that its sole purpose was to make the State amenable to suit under IGRA in the wake of the Supreme Court's decision in *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 55-56 (1996), which struck down IGRA's abrogation of state sovereign immunity. *See Hotel Employees*, 21 Cal. 4th at 614-615. As the invalid IGRA provision which section 98005 mimics never authorized damages suits, it logically follows that neither does section 98005. *See Confederated Tribes and Bands of Yakama Indian*

Nation v. Lowry, 968 F. Supp. 531, 535 n.6 (E.D. Wash.,1996) (noting that 25 U.SC. § 2710(d)(7)(A)(ii) did not authorize damages suits under IGRA *vacated on other grounds* by 176 F.3d 467. In fact, section 9.4(a)(2) of Rincon's Compact expressly provides that California *has not* waived its sovereign immunity with respect to claims for monetary damages:

> The State and the Tribe expressly consent to be sued therein and waive any immunity therefrom that they may have provided that ... (2) Neither side makes any claim for monetary damages (that is only injunctive, specific performance, including enforcement of a provision of this Compact requiring payment of money to one or another of the parties, or declaratory relief is sought).

(Doc. No. 20, Ex. A at 29).

Thus, not only is it not overwhelmingly clear from the statute's text that the State intended to waive its immunity from damages claims, the circumstances surrounding section 98005's enactment affirmatively suggest that such a waiver was *not* intended. Accordingly, Plaintiff's seventh claim is barred by the Eleventh Amendment.

C. ATTORNEY GENERAL BILL LOCKYER

Additionally, this Court agrees with Defendants that California Attorney General Bill Lockyer ("Lockyer") has not been implicated by Plaintiff's claims and no remedy is directed towards Lockyer or his duties under state law. Plaintiff concedes that the Attorney General need not be a party to this litigation. Therefore, Defendant Lockyer will be removed as a named defendant from all further proceedings in this case.

IV. CONCLUSION AND ORDER

In light of the foregoing, the Court **GRANTS** Plaintiff's motion for a new trial and reconsideration (Doc. Nos. 38-1, 38-2). The Court **GRANTS** Defendants' original motion to dismiss Plaintiff's fifth and seventh claims and to remove California Attorney General Bill Lockyer as a named defendant in this action. Finding that leave to amend would be futile, Plaintiff's fifth and seventh claims are **DISMISSED WITH PREJUDICE.**

IT IS SO ORDERED.

DATE: March 21, 2005

/s/ Hon. Thomas J. Whelan
HON. THOMAS J. WHELAN
United States District Judge
Southern District of California

APPENDIX – J

APPENDIX J

FEDERAL RULES OF CIVIL PROCEDURE

Rule 19. Required Joinder of Parties

(a) PERSONS REQUIRED TO BE JOINED IF FEASIBLE.

(1) *Required Party.* A person who is subject to service of process and whose joinder will not deprive the court of subject matter jurisdiction must be joined as a party if:

(A) in that person's absence, the court cannot accord complete relief among existing parties; or

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:

(i) as a practical matter impair or impede the person's ability to protect the interest; or

(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

(2) *Joinder by Court Order.* If a person has not been joined as required, the court must order that the person be made a party. A person who refuses to join as a plaintiff may be made either a defendant or, in a proper case, an involuntary plaintiff.

(3) Venue. If a joined party objects to venue and the joinder would make venue improper, the court must dismiss that party.

(b) When Joinder Is Not Feasible. If a person who is required to be joined if feasible cannot be joined,

the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed. The factors for the court to consider include:

(1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;

(2) the extent to which any prejudice could be lessened or avoided by:

(A) protective provisions in the judgment;

(B) shaping the relief; or

(C) other measures;

(3) whether a judgment rendered in the person's absence would be adequate; and

(4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

(c) Pleading the Reasons for Nonjoinder. When asserting a claim for relief, a party must state:

(1) the name, if known, of any person who is required to be joined if feasible but is not joined; and

(2) the reasons for not joining that person.

(d) Exception for Class Actions. This rule is subject to Rule 23.

(As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1 1987; Apr. 30, 2007; eff. Dec. 1, 2007.)

APPENDIX – K

APPENDIX K

TRIBAL-STATE GAMING COMPACT
Between the SAN PASQUAL BAND OF MISSION INDIANS, a federally recognized Indian Tribe,

and the
STATE OF CALIFORNIA

This Tribal-State Gaming Compact is entered into on a government-to-government basis by and between the San Pasqual Band of Mission Indians, a federally-recognized sovereign Indian tribe (hereafter "Tribe"), and the State of California, a sovereign State of the United States (hereafter "State"), pursuant to the Indian Gaming Regulatory Act of 1988 (P.L. 100-497, codified at 18 U.S.C. Sec. 1166 et seq. and 25 U.S.C. Sec. 2701 et seq.) (hereafter "IGRA"), and any successor statute or amendments.

PREAMBLE

A. In 1988, Congress enacted IGRA as the federal statute governing Indian gaming in the United States. The purposes of IGRA are to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self sufficiency, and strong tribal governments; to provide a statutory basis for regulation of Indian gaming adequate to shield it from organized crime and other corrupting influences; to ensure that the Indian tribe is the primary beneficiary of the gaming operation; to ensure that gaming is conducted fairly and honestly by both the operator and players; and to declare that the establishment of an independent federal regulatory authority for gaming on Indian lands, federal standards for gaming on Indian lands, and a National Indian Gaming Commission are necessary to meet congressional concerns.

B. The system of regulation of Indian gaming fashioned by Congress in IGRA rests on an allocation of regulatory jurisdiction among the three

sovereigns involved: the federal government, the state in which a tribe has land, and the tribe itself. IGRA makes Class III gaming activities lawful on the lands of federally-recognized Indian tribes only if such activities are: (1) authorized by a tribal ordinance, (2) located in a state that permits such gaming for any purpose by any person, organization or entity, and (3) conducted in conformity with a gaming compact entered into between the Indian tribe and the state and approved by the Secretary of the Interior.

C. The Tribe does not currently operate a gaming facility that offers Class III gaming activities. However, on or after the effective date of this Compact, the Tribe intends to develop and operate a gaming facility offering Class III gaming activities on its reservation land, which is located in San Diego County of California.

D. The State enters into this Compact out of respect for the sovereignty of the Tribe; in recognition of the historical fact that Indian gaming has become the single largest revenue-producing activity for Indian tribes in the United States; out of a desire to terminate pending "bad faith" litigation between the Tribe and the State; to initiate a new era of tribal-state cooperation in areas of mutual concern; out of a respect for the sentiment of the voters of California who, in approving Proposition 5, expressed their belief that the forms of gaming authorized herein should be allowed; and in anticipation of voter approval of SCA 11 as passed by the California legislature.

E. The exclusive rights that Indian tribes in California, including the Tribe, will enjoy under this Compact create a unique opportunity for the Tribe to operate its Gaming Facility in an .economic environment free of competition from the Class III gaming referred to in Section 4.0 of this Compact on non-Indian lands in California. The parties are mindful that this unique environment is of great economic value to the Tribe and the fact that income from Gaming Devices represents a substantial portion of the tribes' gaming revenues. In

consideration for the exclusive rights enjoyed by the tribes, and in further consideration for the State's willingness to enter into this Compact, the tribes have agreed to provide to the State, on a sovereign-to-sovereign basis, a portion of its revenue from Gaming Devices.

F. The State has a legitimate interest in promoting the purposes of IGRA for all federally recognized Indian tribes in California, whether gaming or non-gaming. The State contends that it has an equally legitimate sovereign interest in regulating the growth of Class III gaming activities in California. The Tribe and the State share a joint sovereign interest in ensuring that tribal gaming activities are free from criminal and other undesirable elements.

Section 1.0. PURPOSES AND OBJECTIVES.

The terms of this Gaming Compact are designed and intended to:

(a) Evidence the goodwill and cooperation of the Tribe and State in fostering a mutually respectful government-to-government relationship that will serve the mutual interests of the parties.

(b) Develop and implement a means of regulating Class III gaming, and only Class III gaming, on the Tribe's Indian lands to ensure its fair and honest operation in accordance with IGRA, and through that regulated Class III gaming, enable the Tribe to develop self sufficiency, promote tribal economic development, and generate jobs and revenues to support the Tribe's government and governmental services and programs.

(c) Promote ethical practices in conjunction with that gaming, through the licensing and control of persons and entities employed in or providing goods and services to the Tribe's Gaming Operation and protecting against the presence or participation of persons whose criminal backgrounds, reputations, character, or associations make them unsuitable for participation in gaming, thereby maintaining a high level of integrity in tribal government gaming.

Sec. 2.0. DEFINITIONS.

Sec. 2.1. "Applicant" means an individual or entity that applies for a Tribal license or State certification.

Sec. 2.2. "Association" means an association of California tribal and state gaming regulators, the membership of which comprises up to two representatives from each tribal gaming agency of those tribes with whom the State has a gaming compact under IGRA and up to two delegates each from the state Division of Gambling Control and the state Gambling Control Commission.

Sec. 2.3. "Class III gaming" means the forms of Class III gaming defined as such in 25 U.S.C. Sec. 2703(8) and by regulations of the National Indian Gaming Commission.

Sec. 2.4. "Gaming Activities" means the Class III gaming activities authorized under this Gaming Compact.

Sec. 2.5. "Gaming Compact" or "Compact" means this compact.

Sec. 2.6. "Gaming Device" means a slot machine, including an electronic, electromechanical, electrical, or video device that, for consideration, permits: individual play with or against that device or the participation in any electronic; electromechanical, electrical, or video system to which that device is connected; the playing of games thereon or therewith, including, but not limited to, the playing of facsimiles of games of chance or skill; the possible delivery of, or entitlement by the player to, a prize or something of value as a result of the application of an element of chance; and a method for viewing the outcome, prize won, and other information regarding the playing of games thereon or therewith.

Sec. 2.7. "Gaming Employee" means any person who (a) operates, maintains, repairs, assists in any Class III gaming activity, or is in any way responsible for supervising such gaming activities or persons who conduct, operate, account for, or supervise any such gaming activity, (b) is in a category under federal or tribal gaming law requiring

licensing, (c) is an employee of the Tribal Gaming Agency with access to confidential information, or (d) is a person whose employment duties require or authorize access to areas of the Gaming Facility that are not open to the public.

Sec. 2.8. "Gaming Facility" or "Facility" means any building in which Class III gaming activities or gaming operations occur, or in which the business records, receipts, or other funds of the gaming operation are maintained (but excluding offsite facilities primarily dedicated to storage of those records. and financial institutions) and all rooms, buildings, and areas, including parking lots and walkways, a principal purpose of which is to serve the activities of the Gaming Operation, provided that nothing herein prevents the conduct of Class II gaining (as defined under IGRA) therein.

Sec. 2.9. "Gaming Operation" means the business enterprise that offers and operates Class III Gaming Activities, whether exclusively or otherwise.

Sec. 2.10. "Gaming Ordinance" means a tribal ordinance or resolution duly authorizing the conduct of Class III Gaming Activities on the Tribe's Indian lands and approved under IGRA.

Sec. 2.11. "Gaming Resources" means any goods or services provided or used in connection with Class III Gaming Activities, whether exclusively or otherwise, including, but not limited to, equipment, furniture, gambling devices and ancillary equipment, implements of gaming activities such as playing cards and dice, furniture designed primarily for Class III gaming activities, maintenance or security equipment and services, and Class III gaming consulting services. "Gaming Resources" does not include professional accounting and legal services.

Sec. 2.12. "Gaming Resource Supplier" means any person or entity who, directly or indirectly, manufactures, distributes, supplies, vends, leases, or otherwise purveys Gaming Resources to the Gaming Operation or Gaming Facility, provided that the Tribal Gaming Agency may exclude a purveyor of equipment or furniture that is not specifically designed for, and is distributed generally for use

other than in connection with, Gaming Activities, if the purveyor is not otherwise a Gaming Resource Supplier as described by of Section 6.4.5, the compensation received by the purveyor is not grossly disproportionate to the value of the goods or services provided, and the purveyor is not otherwise a person who exercises a significant influence over the Gambling Operation.

Sec. 2.13. "IGRA" means the Indian Gaming Regulatory Act of 1988 (P.L. 100-497,18 U.S.C. Sec. 1166 et seq. and 25 U.S.C. Sec. 2701 et seq.) any amendments thereto, and all regulations promulgated thereunder.

Sec. 2.14. "Management Contractor" means any Gaming Resource Supplier with whom the Tribe has contracted for the management of any Gaming Activity or Gaming Facility, including, but not limited to, any person who would be regarded as a management contractor under IGRA.

Sec. 2.15. "Net Win" means "net win" as defined by American Institute of Certified Public Accountants.

Sec. 2.16. "NIGC" means the National Indian Gaming Commission.

Sec. 2.17. "State" means the State of California or an authorized official or agency thereof.

Sec. 2.18. "State Gaming Agency" means the entities authorized to investigate, approve, and regulate gaming licenses pursuant to the Gambling Control Act (Chapter 5 (commencing with Section 19800) of Division 8 of the Business and Professions Code).

Sec. 2.19. "Tribal Chairperson" means the person duly elected or selected under the Tribe's organic documents, customs, or traditions to serve as the primary spokesperson for the Tribe.

Sec. 2.20. "Tribal Gaming Agency" means the person, agency, board, committee, commission, or council designated under tribal law, including, but not limited to, an intertribal gaming regulatory agency approved to fulfill those functions by the National Indian Gaming Commission, as primarily responsible for carrying out the Tribe's regulatory

responsibilities under IGRA and the Tribal Gaming Ordinance. No person employed in, or in connection with, the management, supervision, or conduct of any gaming activity may be a member or employee of the Tribal Gaming Agency.

Sec. 2.21. "Tribe" means the San Pasqual Band of Mission Indians, a federally-recognized Indian tribe, or an authorized official or agency thereof.

Sec. 3.0. CLASS III GAMING AUTHORIZED AND PERMITTED. The Tribe is hereby authorized and permitted to engage in only the Class III Gaming Activities expressly referred to in Section 4.0 and shall not engage in Class III gaming that is not expressly authorized in that Section.

Sec. 4.0. SCOPE OF CLASS III GAMING.

Sec. 4.1. Authorized and Permitted Class III gaming. The Tribe is hereby authorized and permitted to operate the following Gaming Activities under the terms and conditions set forth in this Gaming Compact:

(a) The operation of Gaming Devices.

(b) Any banking or percentage card game.

(c) The operation of any devices or games that are authorized under state law to the California State Lottery, provided that the Tribe will not offer such games through use of the Internet unless others in the state are permitted to do so under state and federal law.

(e) Nothing herein shall be construed to preclude negotiation of a separate compact governing the conduct of off-track wagering at the Tribe's Gaming Facility.

Sec. 4.2. Authorized Gaming Facilities. The Tribe may establish and operate not more than two Gaming Facilities, and only on those Indian lands on which gaming may lawfully be conducted under the Indian Gaming Regulatory Act. The Tribe may combine and operate in each Gaming Facility any forms and kinds of gaming permitted under law except to the extent limited under IGRA, this Compact, or the Tribe's Gaming Ordinance.

Sec. 4.3. Sec. 4.3. Authorized number of Gaming Devices

Sec. 4.3.1. The Tribe may operate no more Gaming Devices than the larger of the following:

(a) A number of terminals equal to the number of Gaming Devices operated by the Tribe on September 1, 1999; or

(b) Three hundred fifty (350) Gaming Devices.

Sec. 4.3.2. Revenue Sharing with Non-Gaming Tribes.

(a) For the purposes of this Section 4.3.2 and Section 5.0, the following definitions apply:

(i) A "Compact Tribe" is a tribe having a compact with the State that authorizes the Gaming Activities authorized by this Compact. Federally-recognized tribes that are operating fewer than 350 Gaming Devices are "Non-Compact Tribes." Non-Compact Tribes shall be deemed third party beneficiaries of this and other compacts identical in all material respects. A Compact Tribe that becomes a Non-Compact Tribe may not thereafter return to the status of a Compact Tribe for a period of two years becoming a Non-Compact Tribe.

(ii) The Revenue Sharing Trust Fund is a fund created by the Legislature and) administered by the California Gambling Control Commission, as Trustee, for the receipt, deposit, and distribution of monies paid pursuant to this Section 4.3.2.

(iii) The Special Distribution Fund is a fund created by the Legislature for the receipt, deposit, and distribution of monies paid pursuant to Section 5.0.

Sec. 4.3.2.1. Revenue Sharing Trust Fund.

(a) The Tribe agrees with all other Compact Tribes that are parties to compacts having this Section 4.3.2, that each Non-Compact Tribe in the State shall receive the sum of $1.1 million per year. In the event there are insufficient monies in the Revenue Sharing Trust Fund to pay $1.1 million per year to each Non-Compact Tribe, any available monies in that Fund shall be distributed to Non-Compact Tribes in equal shares. Monies in excess of the amount necessary to $1.1 million to each Non-Compact Tribe shall remain in the Revenue Sharing

Trust Fund available for disbursement in future years.

(b) Payments made to Non-Compact Tribes shall be made quarterly and in equal shares out of the Revenue Sharing Trust Fund. The Commission shall serve as the trustee of the fund. The Commission shall have no discretion with respect to the use or disbursement of the trust funds. Its sole authority shall be to serve as a depository of the trust funds and to disburse them on a quarterly basis to Non-Compact Tribes. In no event shall the State's General Fund be obligated to make up any shortfall or pay any unpaid claims.

Sec. 4.3.2.2. Allocation of Licenses.

(a) The Tribe, along with all other Compact Tribes, may acquire licenses to use Gaming Devices in excess of the number they are authorized to use under Sec. 4.3.1, but in no event may the Tribe operate more than 2,000 Gaming Devices, on the following terms, conditions, and priorities:

(1) The maximum number of machines that all Compact Tribes in the aggregate may license pursuant to this Section shall be a sum equal to 350 multiplied by the number of Non-Compact tribes as of September 1, 1999, plus the difference between 350 and the lesser number authorized under Section 4.3.1.

(2) The Tribe may acquire and maintain a license to operate a Gaming Device by paying into the Revenue Sharing Trust Fund, on a quarterly basis, in the following amounts:

Number of Licensed Devices	Fee Per Device Per Annum
1-350	$0
351-750	$900
751-1250	$1950
1251-2000	$4350

(3) Licenses to use Gaming Devices shall be awarded as follows:

(i) First, Compact Tribes with no Existing Devices (i.e., the number of Gaming Devices operated by a Compact Tribe as of September 1, 1999) may draw up to 150 licenses for a total of 500 Gaming Devices;

(ii) Next, Compact Tribes authorized under Section 4.3.1 to operate up to and including 500 Gaming Devices as of September 1, 1999 (including tribes, if any, that have acquired licenses through subparagraph (i)), may draw up to an additional 500 licenses, to a total of 1000 Gaming Devices;

(iii) Next, Compact Tribes operating between 501 and 1000 Gaming Devices as of September 1, 1999 (including tribes, if any, that have acquired licenses through subparagraph (ii)), shall be entitled to draw up to an additional 750 Gaming Devices;

(iv) Next, Compact Tribes authorized to operate up to and including 1500 gaming devices (including tribes, if any, that have acquired licenses through subparagraph (iii)), shall be entitled to draw up to an additional 500 licenses, for a total authorization to operate up to 2000 gaming devices.

(v) Next, Compact Tribes authorized to operate more than 1500 gaming devices (including tribes, if any, that have acquired licenses through subparagraph (iv)), shall be entitled to draw additional licenses up to a total authorization to operate up to 2000 gaming devices.

(vi) After the first round of draws, a second arid subsequent round(s) shall be conducted utilizing the same order of priority as set forth above. Rounds shall continue until tribes cease making draws, at which time draws will be discontinued for one month or until the Trustee is notified that a tribe desires to acquire a license, whichever last occurs.

(e) As a condition of acquiring licenses to operate Gaming Devices, a non-refundable one-time pre-payment fee shall be required in the amount of $1,250 per Gaming Device being licensed, which fees shall be deposited in the Revenue Sharing Trust Fund. The license for any Gaming Device shall be canceled if the Gaming Device authorized by the

license is not in commercial operation within twelve months of issuance of the license.

Sec. 4.3.2.3. The Tribe shall not conduct any Gaming Activity authorized by this Compact if the Tribe is more than two quarterly contributions in arrears in its license fee payments to the Revenue Sharing Trust Fund.

Sec. 4.3.3. If requested to do so by either party after March 7, 2003, but not later than March 31, 2003, the parties will promptly commence negotiations in good faith with the Tribe concerning any matters encompassed by Sections 4.3.1 and Section 4.3.2, and their subsections.

SEC. 5.0 REVENUE DISTRIBUTION

Sec. 5.1. (a) The Tribe shall make contributions to the Special Distribution Fund created by the Legislature, in accordance with the following schedule, but only with respect to the number of Gaming Devices operated by the Tribe on September 1, 1999

Number of Terminals in Quarterly Device Base	Percent of Average Gaming Device Net Win
1 – 200	0%
201 - 500	7%
501 - 1000	7% applied to the excess over 200 terminals, up to 500 terminals, plus 10% applied to terminals over 500 terminals, up to 1000 terminals.
1000+	7% applied to excess over 200, up to 500 terminals, plus 10% applied to terminals over 500, up to 1000 terminals, plus 13% applied to the excess above 1000 terminals.

(b) The first transfer to the Special Distribution Fund of its share of the gaming revenue shall made at the conclusion of the first calendar

quarter following the second anniversary date of the effective date of this Compact.

Sec. 5.2. Use of funds. The State's share of the Gaming Device revenue shall be placed in the Special Distribution Fund, available for appropriation by the Legislature for the following purposes: (a) grants, including any administrative costs, for programs designed to address gambling addiction; (b) grants, including any administrative costs, for the support of state and local government agencies impacted by tribal government gaming; (c) compensation for regulatory costs incurred by the State Gaming Agency and the state Department of Justice in connection with the implementation and administration of the Compact; (d) payment of shortfalls that may occur in the Revenue Sharing Trust Fund; and (e) any other purposes specified by the Legislature. It is the intent of the parties that Compact Tribes will be consulted in the process of identifying purposes for grants made to local governments.

Sec. 5.3. (a) The quarterly contributions due under Section 5.1 shall be determined and made not later than the thirtieth (30th) day following the end of each calendar quarter by first determining the total number of all Gaming Devices operated by a Tribe during a given quarter ("Quarterly Device Base"). The "Average Device Net Win" is calculated by dividing the total Net Win from all terminals during the quarter by the Quarterly Terminal Base.

(b) Any quarterly contribution not paid on or before the date on which such amount is due shall be deemed overdue. If any quarterly contribution under Section 5.1 is overdue to the Special Distribution Fund, the Tribe shall pay to the Special Distribution Fund, in addition to the overdue quarterly contribution, interest on such amount from the date the quarterly contribution was due until the date such quarterly contribution (together with interest thereon) was actually paid at the rate of 1.0% per month or the maximum rate permitted by state law, whichever is less. Entitlement to such interest shall

be in addition to any other remedies the State may have.

(c) At the time each quarterly contribution is made, the Tribe shall submit to the State a report (the "Quarterly Contribution Report") certified by an authorized representative of the Tribe reflecting the Quarterly Device Base, the Net Win from all terminals in the Quarterly Device Base (broken down by Gaming Device), and the Average Device Net Win.

(d) If the State causes an audit to be made pursuant to subdivision (c), and the Average Device Net Win for any quarter as reflected on such quarter's Quarterly Contribution Reports is found to be understated, the State will promptly notify the Tribe, and the Tribe will either accept the difference or provide a reconciliation satisfactory to the State. If the Tribe accepts the difference or does not provide reconciliation satisfactory to the State, the Tribe must immediately pay the amount of the resulting deficiencies in the quarterly contribution plus interest on such amounts from the date they were due at the rate of 1.0% per month or the maximum rate permitted by applicable law, whichever is less.

(e) The Tribe shall not conduct Class III gaming if more than two quarterly contributions to the Special Distribution Fund are overdue.

Sec. 6.0. LICENSING.

Sec. 6.1. Gaming Ordinance and Regulations. All Gaming Activities conducted under this Gaming Compact shall, at a minimum, comply with a Gaming Ordinance duly adopted by the Tribe and approved in accordance with IGRA, and with all rules, regulations, procedures, specifications, and standards duly adopted by the Tribal Gaming Agency.

Sec. 6.2. Tribal Ownership, Management, and Control of Gaming Operation. The Gaming Operations authorized under this Gaming Compact shall be owned solely by the Tribe.

Sec. 6.3. Prohibition Regarding Minors. (a) Except as provided in subdivision (b), the Tribe shall not permit persons under the age of 18 years to be present in any room in which Class III Gaming Activities are being conducted unless the person is

en-route to a non-gaming area of the Gaming Facility.

(b) If the Tribe permits the consumption of alcoholic beverages in the Gaming Facility, the Tribe shall prohibit persons under the age of 21 years from being present in any area in which Class III gaming activities are being conducted and in which alcoholic beverages may he consumed to the extent required by the state Department of Alcoholic Beverage Control.

Sec. 6.4. Licensing Requirements and Procedures.

Sec. 6.4.1. Summary of Licensing Principles. All persons in any way connected with the Gaming Operation or Facility who are required to be licensed or to submit to a background investigation under IGRA, and any others required to be licensed under this Gaming Compact, including, but not limited to, all Gaming Employees and Gaming Resource Suppliers, and any other person having a significant influence over the Gaming Operation must be licensed by the Tribal Gaming Agency. The parties intend that the licensing process provided for in this Gaming Compact shall involve joint cooperation between the Tribal Gaming Agency and the State Gaming Agency, as more particularly described herein.

Sec. 6.4.2. Gaming Facility. (a) The Gaming Facility authorized by this Gaming Compact shall be licensed by the Tribal Gaming Agency in conformity with the requirements of this Gaming Compact, the Tribal Gaming Ordinance, and IGRA. The license shall be reviewed and renewed, if appropriate, every two years thereafter. Verification that this requirement has been met shall be provided by the Tribe to the State Gaming Agency every two years. The Tribal Gaming Agency's certification to that effect shall be posted in a conspicuous and public place in the Gaming Facility at all times.

(b) In order to protect the health and safety of all Gaming Facility patrons, guests, and employees, all Gaming Facilities of the Tribe constructed after the effective date of this Gaming Compact, and all

expansions or modifications to a Gaming Facility in operation as of the effective date of this Compact, shall meet the building and safety codes of the Tribe, which, as a condition for engaging in that construction, expansion, modification, or renovation, shall amend its existing building and safety codes if necessary, or enact such codes if there are none, so that they meet the standards of either the building and safety codes of any county within the boundaries of which the site of the Facility is located, or the Uniform Building Codes, including all uniform fire, plumbing, electrical, mechanical, and related codes then in effect provided that nothing herein shall be deemed to confer jurisdiction upon any county or the State with respect to any reference to such building and safety codes. Any such construction, expansion or modification will also comply with the federal Americans with Disabilities Act, P.L. 101-336, as amended, 42 U.S.C. § 12101 et seq.

(c) Any Gaming Facility in which gaming authorized by this Gaming Compact is conducted shall be issued a certificate of occupancy by the Tribal Gaming Agency prior to occupancy if it was not used for any Gaming Activities under IGRA prior to the effective date of this Gaming Compact, or, if it was so used, within one year thereafter. The issuance of this certificate shall be reviewed for continuing compliance every two years thereafter. Inspections by qualified building and safety experts shall be conducted under the direction of the Tribal Gaming Agency as the basis for issuing any certificate hereunder. The Tribal Gaming Agency shall determine and certify that, as to new construction or new use for gaming the Facility meets the Tribe's building: and safety code, or, as to facilities or portions of facilities that were used for the Tribe's Gaming Activities prior to this Gaming Compact, that the facility or portions thereof do not endanger the health or safety of occupants or the integrity of the Gaming Operation. The Tribe will not offer Class III gaming in a Facility that is constructed or maintained in a manner that endangers the health or

safety of occupants or the integrity of the gaming operation.

(d) The State shall designate an agent or agents to be given reasonable notice of each inspection by the Tribal Gaming Agency's experts, which state agents may accompany any such inspection. The Tribe agrees to correct any Gaming Facility condition noted in an inspection that does not meet the standards set forth in subdivisions (b) and (c). The Tribal Gaming Agency and the State's designated agent or agents shall exchange any reports of an inspection within 10 days after completion of the report, which reports shall also be separately and simultaneously forwarded by both agencies to the Tribal Chairperson. Upon certification by the Tribal Gaming Agency's experts that a Gaming Facility meets applicable standards, the Tribal Gaming Agency shall forward the experts' certification to the State within 10 days of issuance. If the State's agent objects to that certification, the Tribe shall make a good faith effort to address the State's concerns, but if the State does not withdraw its objection, the matter will be resolved in accordance with the dispute resolution provisions of Section 9.0.

Sec. 6.4.3. Suitability Standard Regarding Gaming Licenses. (a) In reviewing an application for a gaming license, and in addition to any standards set forth in the Tribal Gaming Ordinance, the Tribal Gaming Agency shall consider whether issuance of the license is inimical to public health, safety, or welfare, and whether issuance of the license will undermine public trust that the Tribe's Gaming Operations, or tribal government gaming generally, are free from criminal and dishonest elements and would be conducted honestly. A license may not be issued unless, based on all information and documents submitted, the Tribal Gaming Agency is satisfied that the applicant is all of the following, in addition to any other criteria in IGRA or the Tribal Gaming Ordinance:

(a) A person of good character, honesty, and integrity.

(b) A person whose prior activities, criminal record (if any), reputation, habits, and associations do not pose a threat to the public interest or to the effective regulation and control of gambling, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the conduct of gambling, or in the carrying on of the business and financial arrangements incidental thereto.

(c) A person who is in all other respects qualified to be licensed as provided in this Gaming Compact, IGRA, the Tribal Gaming Ordinance, and any other criteria adopted by the Tribal Gaming Agency or the Tribe. An applicant shall not be found to be unsuitable solely on the ground that the applicant was an employee of a tribal gaming operation in California that was conducted prior to the effective date of this Compact.

Sec. 6.4.4. Gaming Employees. (a) Every Gaming Employee shall obtain, and thereafter maintain current, a valid tribal gaming license, which shall be subject to biennial renewal; provided that in accordance with Section 6.4.9, those persons may be employed on a temporary or conditional basis pending completion of the licensing process.

(b) Except as provided in subdivisions (c) and (d), the Tribe will not employ or continue to employ, any person whose application to the State Gaming Agency for a determination of suitability, or for a renewal of such a determination, has been denied or has expired without renewal.

(c) Notwithstanding subdivision (a), the Tribe may retain in its employ a person whose application for a determination of suitability, or for a renewal of such a determination, has been denied by the State Gaming Agency, if: (i) the person holds a valid and current license issued by the Tribal Gaming Agency that must be renewed at least biennially (ii) the denial of the application by the State Gaming Agency is based solely on activities, conduct, or associations that antedate the filing of the person's initial application to the State Gaming Agency for a determination of suitability; (iii) the person is not an employee or agent of any other

gaming operation; and (iv) the person has been in the continuous employ of the Tribe for at least three years prior to the effective date of this Compact.

(d) Notwithstanding subdivision (a), the Tribe may employ or retain in its employ a "person whose application for a determination of suitability, or for a renewal of such a determination, has been denied by the State Gaming Agency, if the person is an enrolled member of the Tribe, as defined in this subdivision, and if (i) the person holds a valid and current license issued by the Tribal Gaming Agency that must be renewed at least biennially; (ii) the denial of the application by the State Gaming Agency is based solely on activities, conduct, or associations that antedate the filing of the person's initial application to the State Gaming Agency for a determination of suitability; and (iii) the person is not an employee or agent of any other gaming operation. For purposes of this subdivision, "enrolled member" means a person who is either (a) certified by the Tribe as having been a member of the Tribe for at least five (5) years, or (b) a holder of confirmation of membership issued by the Bureau of Indian Affairs.

(e) Nothing herein shall be construed to relieve any person of the obligation to apply for a renewal of a determination of suitability as required by Section 6.5.6.

Sec. 6.4.5. Gaming Resource Supplier. Any Gaming Resource Supplier who, directly or indirectly, provides, has provided, or is deemed likely to provide at least twenty-five thousand dollars ($25,000) in Gaming Resources in any 12-month period, or who has received at least twenty-five thousand dollars ($25,000) in any consecutive 12-month period within the 24-month period immediately preceding application, shall be licensed by the Tribal Gaming Agency prior to the sale, lease, or distribution, or further sale, lease, or distribution, of any such Gaming Resources to or in connection with the Tribe's Operation or Facility. These licenses shall be reviewed at least every two years for continuing compliance. In connection with such a

review, the Tribal Gaming Agency shall require the Supplier to update all information provided in the previous application. For purposes of Section 6.5.2, such a review shall be deemed to constitute an application for renewal. The Tribe shall not enter into, or continue to make payments pursuant to, any contract or agreement for the provision of Gaming Resources with any person whose application to the State Gaming Agency for a determination of suitability has been denied or has expired without renewal. Any agreement between the Tribe and a Gaming Resource Supplier shall be deemed to include a provision for its termination without further liability on the part of the Tribe, except for the bona fide repayment of all outstanding sums (exclusive of interest) owed as of, or payment for services or materials received up to, the date of termination, upon revocation or non-renewal of the Supplier's license by the Tribal Gaming Agency based on a determination of unsuitability by the State Gaming Agency.

Sec. 6.4.6. Financial Sources. Any person extending financing, directly or indirectly, to the Tribe's Gaming Facility or Gaming Operation shall be licensed by the Tribal Gaming Agency prior to extending that financing, provided that any person who is extending financing at the time of the execution of this Compact shall be licensed by the Tribal Gaming Agency within ninety (90) days of such execution. These licenses shall be reviewed at least every two years for continuing compliance. In connection with such a review, the Tribal Gaming Agency shall require the Financial Source to update all information provided in the previous application. For purposes of Section 6.5.2, such a review shall be deemed to constitute an application for renewal. Any agreement between the Tribe and a Financial Source shall be deemed to include a provision for its termination without further liability on the part of the Tribe, except for the bona fide repayment of all outstanding sums (exclusive of interest) owed as of the date of termination, upon revocation or non-renewal of the Financial Source's license by the

Tribal Gaming Agency based on a determination of unsuitability by the State Gaming Agency. The Tribe shall not enter into, or continue to make payments pursuant to, any contract or agreement for the provision of financing with any person whose application to the State Gaming Agency for a determination of suitability has been denied or has expired without renewal. A Gaming Resource Supplier who provides financing exclusively in connection with the sale or lease of Gaming Resources obtained from that Supplier may be licensed solely in accordance with licensing procedures applicable, if at all, to Gaming Resource Suppliers. The Tribal Gaming Agency may, at its discretion, exclude from the licensing requirements of this section, financing provided by a federally-regulated or state-regulated bank, savings and loan, or other federally- or state-regulated lending institution; or any agency of the federal, state, or local government; or any investor who, alone or in conjunction with others, holds less than 10% of any outstanding indebtedness evidenced by bonds issued by the Tribe.

Sec. 6.4.7. Processing Tribal Gaming License Applications. Each applicant for a tribal gaming license shall submit the completed application along with the required information and an application fee, if required, to the Tribal Gaming Agency in accordance with the rules and regulations of that agency. At a minimum, the Tribal Gaming Agency shall require submission and consideration of all information required under IGRA, including Section 556.4 of Title 25 of the Code of Federal Regulations, for licensing primary management officials and key employees. For applicants who are business entities, these licensing provisions shall apply to the entity as well as: (i) each of its officers and directors; (ii) each of its principal management employees, including any chief executive officer, chief financial officer, chief operating officer, and general manager; (iii) each of its owners or partners, if an unincorporated business; (iv) each of its shareholders who owns more than 10 percent of the shares of the corporation, if a

corporation; and (v) each person or entity (other than a financial institution that the Tribal Gaming Agency has determined does not require a license under the preceding section) that, alone or in combination with others, has provided financing in connection with any gaming authorized under this Gaming Compact, if that person or entity provided more than 10 percent of (a) the start-up capital, (b) the operating capital over a 12-month period, or (c) a combination thereof. For purposes of this Section, where there is any commonality of the characteristics identified in clauses (i) to (v), inclusive, between any two or more entities, those entities may be deemed to be a single entity. Nothing herein precludes the Tribe or Tribal Gaming Agency from requiring more stringent licensing requirements.

Sec. 6.4.8. Background Investigations of Applicants. The Tribal Gaming Agency shall conduct or cause to be conducted all necessary background investigations reasonably required to determine that the applicant is qualified for a gaming license under the standards set forth in Section 6.4.3, and to fulfill all requirements for licensing under IGRA, the Tribal Gaming Ordinance, and this Gaming Compact. The Tribal Gaming Agency shall not issue other than a temporary license until a determination is made that those qualifications have been met. In lieu of completing its own background investigation, and to the extent that doing so does not conflict with or violate IGRA or the Tribal Gaming Ordinance, the Tribal Gaming Agency may contract with the State Gaming Agency for the conduct of background investigations, may rely on a state certification of non-objection previously issued under a gaming compact involving another tribe, or may rely on a State gaming license previously issued to the applicant, to fulfill some or all of the Tribal Gaming Agency's background investigation obligation. An applicant for a tribal gaming license shall be required to provide releases to the State Gaming Agency to make available to the Tribal Gaming Agency background information regarding the applicant. The State Gaming Agency shall cooperate in furnishing to

the Tribal Gaming Agency that information, unless doing so would violate any agreement the State Gaming Agency has with a source of the information other than the applicant, or would impair 'or impede a criminal investigation, or unless the Tribal Gaming Agency cannot provide sufficient safeguards to assure the State Gaming Agency that the information will remain confidential or that provision of the information would violate state or federal law. If the Tribe adopts an ordinance continuing that Article 6 (commencing with section 11140) of Chapter 1 of Title 1 of Part 4 of the California Penal Code is applicable to members, investigators, and staff of the Tribal Gaming Agency, and those members, investigators, and staff thereafter comply with that ordinance, then, for purposes of carrying out its obligations under this Section, the Tribal Gaming Agency shall be considered to be an entity entitled to receive state summary criminal history information within the meaning of subdivision (b)(12) of section 11105 of the California Penal Code. The California Department of Justice shall provide services to the Tribal Gaming: Agency through the California Law Enforcement Telecommunications System (CLETS), subject to a determination by the CLETS advisory committee that the Tribal Gaming Agency is qualified for receipt of such services, and on such terms and conditions as are deemed reasonable by that advisory committee.

Sec. 6.4.9. Temporary Licensing of Gaming Employees. Notwithstanding anything herein to the contrary, if the applicant has completed a license application in a manner satisfactory to the Tribal Gaming Agency, and that agency has conducted a preliminary background investigation, and the investigation or other information held by that agency does not indicate that the applicant has a criminal history or other information in his or her background that would either automatically disqualify the applicant from obtaining a license or cause a reasonable person to investigate further before issuing a license, or is otherwise unsuitable for licensing, the Tribal Gaming Agency may issue a

temporary license and may impose such specific conditions thereon pending completion of the applicant's background investigation, as the Tribal Gaming Agency in its sole discretion shall determine. Special fees may be required by the Tribal Gaming Agency to issue or maintain a temporary license. A temporary license shall remain in effect until suspended or revoked, or a final determination is made on the application. At any time after issuance of a temporary license, the Tribal Gaming Agency may suspend or revoke it in accordance with Sections 6.5.1 or 6.5.5, and the State Gaming Agency may request suspension or revocation in accordance with subdivision (d) of Section 6.5.6. Nothing herein shall be construed to relieve the Tribe of any obligation under Part 558 of Title 25 of the Code of Federal Regulations.

Sec. 6.5. Gaming License Issuance. Upon completion of the necessary background investigation, the Tribal Gaming Agency may issue a license on a conditional or unconditional basis. Nothing herein shall create a property or other right of an applicant in an opportunity to be licensed, or in a license itself, both of which shall be considered to be privileges granted to the applicant in the sole discretion of the Tribal Gaming Agency.

Sec. 6.5.1. Denial, Suspension, or Revocation of Licenses. (a) Any application for a gaming license may be denied, and any license issued may be revoked, if the Tribal Gaming Agency determines that the application is incomplete or deficient, or if the applicant is determined to be unsuitable or otherwise unqualified for a gaming license. Pending consideration of revocation, the Tribal Gaming Agency may suspend a license in accordance with Section 6.5.5. All rights to notice and hearing shall be governed by tribal law, as to which the applicant will be notified in writing along with notice of an intent to suspend or revoke the license.

(b)(i) Except as provided in paragraph (ii) below, upon receipt of notice that the State Gaming Agency has determined that a person would be unsuitable for licensure in a gambling establishment subject to the

jurisdiction of the State Gaming Agency, the Tribal Gaming Agency shall promptly revoke any license that has theretofore been issued to the person; provided that the Tribal Gaming Agency may, in its discretion, re- issue a license to the person following entry of a final judgment reversing the determination of the State Gaming Agency in a proceeding in state court conducted pursuant to section 1085 of the California Civil Code.

(ii) Notwithstanding a determination of unsuitability by the State Gaming Agency, the Tribal Gaming Agency may, in its discretion, decline to revoke a tribal license issued to a person employed by the Tribe pursuant to Section 6.4.4(c) or Section 6.4.4(d).

Sec. 6.5.2. Renewal of Licenses; Extensions; Further Investigation. The term of a tribal gaming license shall not exceed two years, and application for renewal of a license must be made prior to its expiration. Applicants for renewal of a license shall provide updated material as requested, on the appropriate renewal forms, but, at the discretion of the Tribal Gaming Agency, may not be required to resubmit historical data previously submitted or that is otherwise available to the Tribal Gaming Agency. At the discretion of the Tribal Gaming Agency, an additional background investigation may be required at any time if the Tribal Gaming Agency determines the need for further information concerning the applicant's continuing suitability or eligibility for a license. Prior to renewing a license, the Tribal Gaming Agency shall deliver to the State Gaming Agency copies of all information and documents received in connection with the application for renewal.

Sec. 6.5.3. Identification Cards. The Tribal Gaming Agency shall require that all persons who are required to be licensed wear, in plain view at all times while in the Gaming Facility, identification badges issued by the Tribal Gaming Agency. Identification badges must display information including, but not limited to, a photograph and an identification number that is adequate to enable

agents of the Tribal Gaming Agency to readily identify the person and determine the validity and date of expiration of his or her license.

Sec. 6.5.4. Fees for Tribal License. The fees for all tribal licenses shall be set by the Tribal Gaming Agency.

Sec. 6.5.5. Suspension of Tribal License. The Tribal Gaming Agency may summarily suspend the license of any employee if the Tribal Gaming Agency determines that the continued licensing of the person or entity could constitute a threat to the public health or safety or may violate the Tribal Gaming Agency's licensing or other standards. Any right to notice or hearing in regard thereto shall be governed by Tribal law.

Sec. 6.5.6. State Certification Process. (a) Upon receipt of a completed license application and a determination by the Tribal Gaming Agency that it intends to issue the earlier of a temporary or permanent license, the Tribal Gaming Agency shall transmit to the State Gaming Agency a notice of intent to license the applicant, together with all of the following: (i) a copy of all tribal license application materials and information received by the Tribal Gaming Agency from the applicant; (ii) an original set of fingerprint cards; (iii) a current photograph; and (iv) except to tile extent waived by the State Gaming Agency, such releases of information, waivers, and other completed and executed forms as have been obtained by the Tribal Gaming Agency. Except for an applicant for licensing as a non-key Gaming Employee, as defined by agreement between the Tribal Gaming Agency and the State Gaming Agency, the Tribal Gaming Agency shall require the applicant also to file an application with the State Gaming Agency, prior to issuance of a temporary or permanent tribal gaming license, for a determination of suitability for licensure under the California Gambling Control Act. Investigation and disposition of that application shall be governed entirely by state law, and the State Gaming Agency shall determine whether the applicant would be found suitable for licensure in a gambling

establishment subject to that Agency's jurisdiction. Additional information may be required by the State Gaming Agency to assist it in its background investigation, provided that such State Gaming Agency requirement shall be no greater than that which may be required of applicants for a State gaming license in connection with nontribal gaming activities and at a similar level of participation or employment. A determination of suitability is valid for the term of the tribal license held by the applicant, and the Tribal Gaming Agency shall require a licensee to apply for renewal of a determination of suitability at such time as the licensee applies for renewal of a tribal gaming license. The State Gaming Agency and the Tribal Gaming Agency (together with tribal gaming agencies under other gaming compacts) shall cooperate in developing standard licensing forms for tribal gaming license applicants, on a statewide basis, that reduce or eliminate duplicative or excessive paperwork, which forms and procedures shall take into account the Tribe's requirements under IGRA and the expense thereof.

(b) Background Investigations of Applicants. Upon receipt of completed license application information from the Tribal Gaming Agency, the State Gaming Agency may conduct a background investigation pursuant to state law to determine whether the applicant would be suitable to be licensed for association with a gambling establishment subject to the jurisdiction of the State Gaming Agency. If further investigation is required to supplement the investigation conducted by the Tribal Gaming Agency, the applicant will be required to pay the statutory application fee charged by the State Gaming Agency pursuant to California Business and Professions Code section 19941 (a), but any deposit requested by the State Gaming Agency pursuant to section 19855 of that Code shall take into account reports of the background investigation already conducted by the Tribal Gaming Agency and the NIGC, if any. Failure to pay the application fee or deposit may be grounds for denial of the application

by the State Gaming Agency. The State Gaming Agency and Tribal Gaming Agency shall cooperate in sharing as much background information as possible, both to maximize investigative efficiency and thoroughness, and to minimize investigative costs. Upon completion of the necessary background investigation or other verification of suitability, the State Gaming Agency shall issue a notice to the Tribal Gaming Agency certifying that the State has determined that the applicant would be suitable, or that the applicant would be unsuitable for licensure in a gambling establishment subject to the jurisdiction of the State Gaming Agency and, if unsuitable, stating the reasons therefor.

(c) The Tribe shall monthly provide the State Gaming Agency with the name, badge identification number, and job descriptions of all non-key Gaming Employees.

(d) Prior to denying an application for a determination of suitability, the State Gaming Agency shall notify the Tribal Gaming Agency and afford the Tribe an opportunity to be heard. Tribal State Gaming Agency denies an application for a determination of the State Gaming Agency denies an application for a determination of suitability, that Agency shall provide the applicant with written notice of all appeal rights available under state law.

Sec. 7.0. COMPLIANCE ENFORCEMENT.

Sec. 7.1. On-Site Regulation. It is the responsibility of the Tribal Gaming Agency to conduct on-site gaming regulation and control in order to enforce the terms of this Gaming Compact, IGRA, and the Tribal Gaming Ordinance with respect to Gaming Operation and Facility compliance, and to protect the integrity of the Gaming Activities, the reputation of the Tribe and the Gaming Operation for honesty and fairness, and the confidence of patrons that tribal government gaming in California meets the highest standards of regulation and internal controls. To meet those responsibilities, the Tribal Gaming Agency shall adopt and enforce regulations, procedures, and practices as set forth herein.

Sec. 7.2. Investigation and Sanctions. The Tribal Gaming Agency shall investigate any reported violation of this Gaming Compact and shall require the Gaming Operation to correct the violation upon such terms and conditions as the Tribal Gaming Agency determines are necessary. The Tribal Gaming Agency shall be empowered by the Tribal Gaming Ordinance to impose fines or other sanctions within the jurisdiction of the Tribe against gaming licensees or other persons who interfere with or violate the Tribe's gaming regulatory requirements and obligations under IGRA, the Tribal Gaming Ordinance, or this Gaming Compact. The Tribal Gaming Agency shall report significant or continued violations of this Compact or failures to comply with its orders to the State Gaming Agency.

Sec. 7.3. Assistance by State Gaming Agency. The Tribe may request the assistance of the State Gaming Agency whenever it reasonably appears that such assistance may be necessary to carry out the purposes described in Section 7.1, or otherwise to protect public health, safety, or welfare. If requested by the Tribe or Tribal Gaming Agency, the State Gaming Agency shall provide requested services to ensure proper compliance with this Gaming Compact. The State shall be reimbursed for its actual and reasonable costs of that assistance, if the assistance required expenditure of extraordinary costs.

Sec. 7.4. Access to Premises by State Gaming Agency; Notification; Inspections. Notwithstanding that the Tribe has the primary responsibility to administer and enforce the regulatory requirements of this Compact, the State Gaming Agency shall have the right to inspect the Tribe's Gaming Facility with respect to Class III Gaming Activities only, and all Gaming Operation or Facility records relating thereto, subject to the following conditions:

Sec. 7.4.1. Inspection of public areas of a Gaming Facility may be made at any time without prior notice during normal Gaming Facility business hours.

Sec. 7.4.2. Inspection of areas of a Gaming Facility not normally accessible to the public may be made at any time during normal Gaming Facility business hours. Immediately after the State Gaming Agency's after the State Gaming Agency's authorized inspector notifies the Tribal Gaming Agency of his or her presence on the premises, presents proper identification, and requests access to the non-public areas of the Gaming Facility. The Tribal Gaming Agency, in its sole discretion, may require a member of the Tribal Gaming Agency to accompany the State Gaming Agency inspector at all times that the State Gaming Agency inspector is in a non-public area of the Gaming Facility. If the Tribal Gaming Agency imposes such a requirement, it shall require such member to be available at all times for those purposes and shall ensure that the member has the ability to gain immediate access to all nonpublic areas of the Gaming Facility. Nothing in this Compact shall be construed to limit the State Gaming Agency to one inspector during inspections.

Sec. 7.4.3. (a) Inspection and copying of Gaming Operation papers, books, and records may occur at any time, immediately after notice to the Tribal Gaming Agency, during the normal hours of the Gaming Facility's business office, provided that the inspection and copying of those papers, books or records shall not interfere with the normal functioning of the Gaming Operation or Facility. Notwithstanding any other provision of California law, all information and records that the State Gaming Agency obtains, inspects, or copies pursuant to this Gaming Compact shall be, and remain, the property solely of the Tribe; provided that such records and copies may be retained by the State Gaming Agency as reasonably necessary for completion of any investigation of the Tribe's compliance with this Compact.

(b)(i) The State Gaming Agency will exercise utmost care in the preservation of the confidentiality of any and all information and documents received from the Tribe, and will apply the highest standards of confidentiality expected under state law to

preserve such information and documents from disclosure. The Tribe may avail itself of any and all remedies under state law for improper disclosure of information or documents. To the extent reasonably feasible, the State Gaming Agency will consult with representatives of the Tribe prior to disclosure of any documents received from the Tribe, or any documents compiled from such documents or from information received from the Tribe, including any disclosure compelled by judicial process, and, in the case of any disclosure compelled by judicial process, will endeavor to give the Tribe immediate notice of the order compelling disclosure and a reasonable opportunity to interpose an objection thereto with the court.

(ii) The Tribal Gaming Agency and the State Gaming Agency shall confer and agree upon protocols for release to other law enforcement agencies of information obtained during the course of background investigations.

(c) Records received by the State Gaming Agency from the Tribe in compliance with this Compact, or information compiled by the State Gaming Agency from those records, shall be exempt from disclosure under the California Public Records Act.

Sec. 7.4.4. Notwithstanding any other provision of this Compact, the State Gaming Agency shall not be denied access to papers, books, records, equipment, or places where such access is reasonably necessary to ensure compliance with this Compact.

Sec, 7.4.5. (a) Subject to the provisions of subdivision (b), the Tribal Gaming Agency shall not permit any Gaming Device to be transported to or from the Tribe's land except in accordance with procedures established by agreement between the State Gaming Agency and the Tribal Gaming Agency and upon, at least 10 days' notice to the Sheriff's Department for the county in which the land is located.

(b) Transportation of a Gaming Device from the Gaming Facility within California is permissible only if: (i) The final destination of the device is a

gaming facility of any tribe in California that has a compact with the State; (ii) The final destination of the device is any other state in which possession of the device or devices is made lawful by state law or by tribal-state compact; (iii) The final destination of the device is another country, or any state or province of another country, wherein possession of the device is lawful; or (iv) The final destination is a location within California for testing, repair, maintenance, or storage by a person or entity that has been licensed by the Tribal Gaming Agency and has been found suitable for licensure by the State Gaming Agency.

(c) Gaming Devices transported off the Tribe's land in violation of this Section 7.4.5 or in violation of any permit issued pursuant thereto is subject to summary seizure by California peace officers.

Sec. 8.0. RULES AND REGULATIONS FOR THE OPERATION AND MANAGEMENT OF THE TRIBAL GAMING OPERATION.

Sec. 8.1. Adoption of Regulations for Operation and Management; Minimum Standards. In order to meet the goals set forth in this Gaming Compact and required of the Tribe by law, the Tribal Gaming Agency shall be vested with the authority to promulgate, and shall promulgate, at a minimum, rules and regulations or specifications governing the following subjects, and to ensure their enforcement in an effective manner:

Sec. 8.1.1. The enforcement of all relevant laws and rules with respect to the Gaming Operation and Facility, and the power to conduct investigations and hearings with respect thereto, and to any other subject within its jurisdiction.

Sec. 8.1.2. Ensuring the physical safety of Gaming Operation patrons and employees, and any other person while in the Gaming Facility. Nothing herein shall be construed to make applicable to the Tribe any s fate laws, regulations, or standards governing the use of tobacco.

Sec. 8.1.3. The physical safeguarding of assets transported to, within, and from the Gaming Facility.

Sec. 8.1.4. The prevention of illegal activity from occurring within the Gaming Facility or with regard to the Gaming Operation including but not limited to the maintenance of employee procedures and a surveillance system as provided below.

Sec. 8.1.5. The recording of any and all occurrences within the Gaming Facility that deviate from normal operating policies and procedures (hereafter "incidents"). The procedure for recording incidents shall: (1) specify that security personnel record all incidents, regardless of an employee's determination that the incident may be immaterial (all incidents shall be identified in writing); (2) require the assignment of a sequential number to each report; (3) provide for permanent reporting in indelible ink in a bound notebook from which pages cannot be removed and in which entries are made on each side of each page; and (4) require that each report include, at a minimum, all of the following:

(a) The record number.
(b) The date.
(c) The time.
(d) The location of the incident.
(e) A detailed description of the incident.
(f) The persons involved in the incident.
(g) The security department employee assigned to the incident.

Sec. 8.1.6. The establishment of employee procedures designed to permit detection of any irregularities, theft, cheating, fraud, or the like, consistent with industry practice.

Sec. 8.1.7. Maintenance of a list of persons barred from the Gaming Facility who, because of their past behavior, criminal history, or association with persons or organizations, pose a threat to the integrity of the Gaming Activities of the Tribe or to the integrity of regulated gaming within the State.

Sec. 8.1.8. The conduct of an audit of the Gaming Operation, not less than annually, by an independent certified public accountant, in accordance with the auditing and accounting standards for audits of casinos of the American Institute of Certified Public Accountants.

Sec. 8.1.9. Submission to, and prior approval, from the Tribal Gaming Agency of the rules and regulations of each Class III game to be operated by the Tribe, and of any changes in those rules and regulations. No Class III game may be played that has not received Tribal Gaming Agency approval.

Sec. 8.1.10. Addressing all of the following:

(a) Maintenance of a copy of the rules, regulations, and procedures for each game as played, including, but not limited to, the method of play and the odds and method of determining amounts paid to winners;

(b) Specifications and standards to ensure that information regarding the method of play, odds, and payoff determinations shall be visibly displayed or available to patrons in written form in the Gaming Facility;

(c) Specifications ensuring that betting limits applicable to any gaming station shall be displayed at that gaming station;

(d) Procedures ensuring that in the event of a patron dispute over the application of any gaming rule or regulation, the matter shall be handled in accordance with, industry practice and principles of fairness, pursuant to the Tribal Gaming Ordinance and any rules and regulations promulgated by the Tribal Gaming Agency.

Sec. 8.1.11. Maintenance of a closed-circuit television surveillance system consistent with industry standards for gaming facilities of the type am scale operated by the Tribe, which system shall be approved by, and may not be modified without the approval of, the Tribal Gaming Agency. The Tribal Gaming Agency shall have current copies of the Gaming Facility floor plan and closed-circuit television system at all times, and any modifications thereof first shall be approved by the Tribal Gaming Agency.

Sec. 8.1.12. Maintenance of a cashier's cage in accordance with industry standards for such facilities:

Sec. 8.1.13. Specification of minimum staff and supervisory requirements for each Gaming Activity to be conducted.

Sec. 8.1.14. Technical standards and specifications for the operation of Gaming Devices and other games authorized herein to be conducted by the Tribe, which technical specifications maybe no less stringent than those l:lpproved by a recognized gaming testing laboratory in the gaming industry.

Sec. 8.2. State Civil and Criminal Jurisdiction. Nothing in this Gaming Compact affects the civil or criminal jurisdiction of the State under Public Law 280 (18 U.S.C. Sec. 1162; 28 U.S.C. Sec. 1360) or IGRA, to the extent applicable. In addition, criminal jurisdiction to enforce state gambling laws is transferred to the State pursuant to 18 U.S.C. § 1166(d), provided that no Gaming Activity conducted by the Tribe pursuant to this Gaming Compact may be deemed to be a civil or criminal violation of any law of the State.

Sec. 8.3. (a) The Tribe shall take all reasonable steps to ensure that members of the Tribal Gaming Agency are free from corruption, undue influence, compromise, and conflicting interests in the conduct of their duties under this Compact; shall adopt a conflict-of-interest code to that end; and shall ensure the prompt removal of any member of the Tribal Gaming Agency who is found to have acted in a corrupt or compromised manner.

(b) The Tribe shall conduct a background investigation on a prospective member of the Tribal Gaming Agency, who shall meet the background requirements of a management contractor under IGRA; provided that, if such official is elected through a tribal election process, that official may not participate in any Tribal Gaming Agency matters under this Compact unless a background investigation has been concluded and the official has been found to be suitable. If requested by the tribal government or the Tribal Gaming Agency, the State Gaming Agency may assist in the conduct of such a background investigation and may assist in the

investigation of any possible corruption or compromise of a member of the agency.

Sec. 8.4. In order to foster statewide uniformity of regulation of Class III gaming operations throughout the state, rules, regulations, standards, specifications, and procedures of the Tribal Gaming Agency in respect to any matter encompassed by Sections 6.0, 7.0, or 8.0 shall be consistent with regulations adopted by the State Gaming Agency in accordance with Section 8.4.1. Chapter 3.5 (commencing with section 11340) of Part 1 of Division 3 of Title 2 of the California Government Code does not apply to regulation; adopted by the State Gaming Agency in respect to tribal gaming operations under this Section.

Sec. 8.4.1. (a) Except as provided in subdivision (d), no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association and the Tribe has had an opportunity to review and comment on the proposed regulation.

(b) Every State Gaming Agency regulation that is intended to apply to the Tribe (other than a regulation proposed or previously approved by the Association) shall be submitted to the Association for consideration prior to submission of the regulation to the Tribe for comment as provided in subdivision (c). A regulation that is disapproved by the Association shall not be submitted to the Tribe for comment unless it is re-adopted by the State Gaming Agency as a proposed regulation, in its original or amended form, with a detailed, written response to the Association's objections.

(c) Except as provided in subdivision (d), no regulation of the State Gaming Agency shall be adopted as a final regulation in respect to the Tribe's Gaming Operation before the expiration of 30 days after submission of the proposed regulation to the Tribe for comment as a proposed regulation, and after consideration of the Tribe's comments, if any.

(d) In exigent circumstances (e.g., imminent threat to public health and safety), the State Gaming Agency may adopt a regulation that becomes

effective immediately. Any such regulation shall be accompanied by a detailed, written description of the exigent circumstances, and shall be submitted immediately to the Association for consideration. If the regulation is disapproved by the Association, it shall cease to be effective, but may be re-adopted by the State Gaming Agency as a proposed regulation. in its original or amended form, with a detailed, written response to the Association's objections, and thereafter submitted to the Tribe for comment as provided in subdivision (c).

(e) The Tribe may object to a State Gaming Agency regulation on the ground that it is unnecessary, unduly burdensome, or unfairly discriminatory, and may seek repeal or amendment of the regulation through the dispute resolution process of Section 9.0.

Sec. 9.0. DISPUTE RESOLUTION PROVISIONS.

Sec. 9.1. Voluntary Resolution; Reference to Other Means of Resolution. In recognition of the government-to-government relationship of the Tribe and the State, the parties shall make their best efforts to resolve disputes that occur under this Gaming Compact by good faith negotiations whenever possible. Therefore, without prejudice to the right of either party to seek injunctive relief against the other when circumstances are deemed to require immediate relief, the parties hereby establish a threshold requirement that disputes between the Tribe and the State first be subjected to a process of meeting and conferring in good faith in order to foster a spirit of cooperation and efficiency in the administration and monitoring of performance and compliance by each other with the terms, provisions, and conditions of this Gaming Compact, as follows:

(a) Either party shall give the other, as soon as possible after the event giving rise to the concern, a written notice setting forth, with specificity, the issues to be resolved.

(b) The parties shall meet and confer in a good faith attempt to resolve the dispute through

negotiation not later than 10 days after receipt of the notice, unless both parties agree in writing to an extension of time.

(c) If the dispute is not resolved to the satisfaction of the parties within 30 calendar days after the first meeting, then either party may seek to have the dispute resolved by an arbitrator in accordance with this section, but neither party shall be required to agree to submit to arbitration.

(d) Disagreements that are not otherwise resolved by arbitration or other mutually acceptable means as provided in Section 9.3 may be resolved in the United States District Court where the Tribe's Gaming Facility is located, or is to be located, and the Ninth Circuit Court of Appeals (or, if those federal courts lack jurisdiction, in any state court of competent jurisdiction and its related courts of appeal). The disputes to be submitted to court action include, but are not limited to, claims of breach or violation of this Compact, or failure to negotiate in good faith as required by the terms of this Compact. In no event may the Tribe be precluded from pursuing any arbitration or judicial remedy against the State on the grounds that the Tribe has failed to exhaust its state administrative remedies. The parties agree that, except in the case of imminent threat to the public health or safety, reasonable efforts will be made to explore alternative dispute resolution avenues prior to resort to judicial process.

Sec. 9.2. Arbitration Rules. Arbitration shall he conducted in accordance with the policies and procedures of the Commercial Arbitration Rules of the American Arbitration Association, and shall be held on the Tribe's land or, if unreasonably inconvenient under the circumstances, at such other location as the parties may agree. Each side shall bear its own costs, attorneys' fees, and one-half the costs and expenses of the American Arbitration Association and the arbitrator, unless the arbitrator rules otherwise. Only one neutral arbitrator may be named, unless the Tribe or the State objects, in which case a panel of three arbitrators (one of whom is selected by each party) will be named. The

provisions of Section 1283.05 of the California Code of Civil Procedure shall apply; provided that no discovery authorized by that section may be conducted without leave of the arbitrator. The decision of the arbitrator shall be in writing, give reasons for the decision, and shall be binding. Judgment on the award may be entered in any federal or state court having jurisdiction thereof.

Sec. 9.3. No Waiver or Preclusion of Other Means of Dispute Resolution. This Section 9.0 may not be construed to waive, limit, or restrict any remedy that is otherwise available to either party nor may this Section be construed to preclude, limit, or restrict the ability of the parties to pursue, by mutual agreement, any other method of dispute resolution, including, but not limited to, mediation or utilization of a technical advisor to the Tribal and State Gaming Agencies; provided that neither party is under any obligation to agree to such alternative method of dispute resolution.

Sec. 9.4. Limited Waiver of Sovereign Immunity. (a) In the event that a dispute is to be resolved in federal court or a state court of competent jurisdiction as provided in this Section 9.0, the State and the Tribe expressly consent to be sued therein and waive any immunity therefrom that they may have provided that:

(1) The dispute is limited solely to issues arising under this Gaming Compact;

(2) Neither side makes any claim for monetary damages (that is, only injunctive, specific performance, including enforcement of a provision of this Compact requiring payment of money to one or another of the parties, or declaratory relief is sought); and

(3) No person or entity other than the Tribe and the State is party to the action, unless failure to join a third party would deprive the court of jurisdiction; provided that nothing herein shall be construed to constitute a waiver of the sovereign immunity of either the Tribe or the State in respect to any such third party.

(b) In the event of intervention by any additional party into any such action without the consent of the Tribe and the State, the waivers of either the Tribe or the State provided for herein may be revoked, unless joinder is required to preserve the court's jurisdiction; provided that nothing herein shall be construed to constitute a waiver of the sovereign immunity of either the Tribe or the State in respect to any such third party.

(c) The waivers and consents provided for under this Section 9.0 shall extend to civil actions authorized by this Compact, including, but not limited to, actions to compel arbitration, any arbitration proceeding herein, any action to confirm or enforce any judgment or arbitration award as provided herein, and any appellate proceedings emanating from a matter in which an immunity waiver has been granted. Except as stated herein or elsewhere in this Compact, no other waivers or consents to be sued, either express or implied, are granted by either party.

Sec. 10.0. PUBLIC AND WORKPLACE HEALTH, SAFETY, AND LIABILITY.

Sec. 10.1. The Tribe will not conduct Class III gaming in a manner that endangers the public health, safety, or welfare; provided that nothing herein shall be construed to make applicable to the Tribe any state laws or regulations governing the use of tobacco.

Sec. 10.2. Compliance. For the purposes of this Gaming Compact, the Tribal Gaming Operation shall:

(a) Adopt and comply with standards no less stringent than state public health standards for food and beverage handling. The Gaming Operation will allow inspection of food and .beverage services by state or county health inspectors, during normal hours of operation, to assess compliance with these standards, unless inspections are routinely made by an agency of the United States government to ensure compliance with equivalent standards of the United States Public Health Service. Nothing herein shall be construed as submission of the Tribe to the

jurisdiction of those state or county health inspectors, but any alleged violations of the standards shall be treated as alleged violations of this Compact.

(b) Adopt and comply with standards no less stringent than federal water quality and safe "drinking water standards applicable in California; the Gaming Operation will allow for inspection and testing of water quality by state or county health inspectors, as applicable, during normal hours of operation, to assess compliance with these standards, unless inspections and testing are made by an agency of the United States pursuant to, or by the Tribe under express authorization of, federal law, to ensure compliance with federal water quality and safe drinking water standards. Nothing herein shall be construed as submission of the Tribe to the jurisdiction of those state or county health inspectors, but any alleged violations of the standards shall be treated as alleged violations of this Compact.

(c) Comply with the building and safety standards set forth in Section 6.4.

(d) Carry no less than five million dollars ($5,000,000) in public liability insurance for patron claims, and that the Tribe provide reasonable assurance that those claims will be promptly and fairly adjudicated, and that legitimate claims will be paid; provided that nothing herein requires the Tribe to agree to liability for punitive damages or attorneys' fees. On or before the effective date of this Compact or not less than 30 days prior to the commencement of Gaming Activities under this Compact, whichever is later, the Tribe shall adopt and make available to patrons a tort liability ordinance setting forth the terms and conditions, if any, under which the Tribe waives immunity to suit for money damages resulting from intentional or negligent injuries to person or property at the Gaming Facility or in connection with the Tribe's Gaming Operation, including procedures for processing any claims for such money damages; provided that nothing in this Section shall require the Tribe to waive its immunity to suit except to the extent of the policy limits set out above.

(e) Adopt and comply with standards no less stringent than federal workplace and occupational health and safety standards; the Gaming Operation will allow for inspection of Gaming Facility workplaces by state inspectors, during normal hours of operation, to assess compliance with these standards, unless inspections are regularly made by an agency of the United States government to ensure compliance with federal workplace and occupational health and safety standards. Nothing herein shall be construed as submission of the Tribe to the jurisdiction of those state inspectors, but any alleged violations of the standards shall be treated as alleged violations of this Compact.

(f) Comply with tribal codes and other applicable federal law regarding public health and safety.

(g) Adopt and comply with standards no less stringent than federal laws and state laws forbidding employers generally from discriminating in the employment of persons to work for the Gaming Operation or in the Gaming Facility on the basis of race, color, religion, national origin, gender, sexual orientation, age, or disability; provided that nothing herein shall preclude the tribe from giving a preference in employment to Indians, pursuant to a duly adopted tribal ordinance.

(h) Adopt and comply with standards that are no less stringent than state laws prohibiting a gaming enterprise from cashing any check drawn against a federal, state, county, or city fund, including but not limited to, Social Security, unemployment insurance, disability payments, or public assistance payments.

(i) Adopt and comply with standards that are no less stringent than state laws, if any, prohibiting a gaming enterprise from providing, allowing, contracting to provide, or arranging to provide alcoholic beverages, or food or lodging for no charge or at reduced prices at a gambling establishment or lodging facility as an incentive or enticement.

(j) Adopt and comply with standards that are no less stringent than state laws, if any, prohibiting extensions of credit.

(k) Provisions of the Bank Secrecy Act, P.L. 91-508, October 26, 1970, 31 U.S.C. Sec. 5311-5314, as amended, and all reporting requirements of the Internal Revenue Service, insofar as such provisions and reporting requirements are applicable to casinos.

Sec. 10.2.1. The Tribe shall adopt and, not later than 30 days after the effective date of this Compact, shall make available on request the standards described in subdivisions (a)-(c) and (e)-(k) of Section 10.2 to which the Gaming Operation is held. In the absence of a promulgated tribal standard in respect to a matter identified in those subdivisions, or the express adoption of an applicable federal statute or regulation in lieu of a tribal standard in respect to any such matter, the applicable state statute or regulation shall be deemed to have been adopted by the Tribe as the applicable standard.

Sec. 10.3 Participation in state statutory programs related to employment. (a) In lieu of permitting the Gaming Operation to participate in the state statutory workers' compensation system, the Tribe may create and maintain a system that provides redress for employee work-related injuries through requiring insurance or self-insurance, which system must include a scope of coverage, availability of an independent medical examination, right to notice, hearings before an independent tribunal, a means of enforcement against the employer, am benefits comparable to those mandated for comparable employees under state law. Not later than the effective date of this Compact, or 60 days prior to the commencement of Gaming Activities under this Compact, the Tribe will advise the State of its election to participate in the statutory workers' compensation system or, alternatively, will forward to the State all relevant ordinances that have been adopted and all other documents establishing the system and demonstrating that the system is fully operational and compliant with the comparability standard set forth above. The parties agree that

independent contractors doing business with the Tribe must comply with all state workers' compensation laws and obligations.

(b) The Tribe agrees that its Gaming Operation will participate in the State's program for providing unemployment compensation benefits and unemployment compensation disability benefits with respect to employees employed at the Gaming Facility, including compliance with the provisions of the California Unemployment Insurance Code, and the Tribe consents to the jurisdiction of the state agencies charged with the enforcement of that Code and of the courts of the State of California for purposes of enforcement.

(c) As a matter of comity, with respect to persons employed at the Gaming Facility, other than members of the Tribe, the Tribal Gaming Operation shall withhold all taxes due to the State as provided in the California Unemployment Insurance Code and the Revenue and Taxation Code, and shall forward such amounts as provided in said Codes to the State.

Sec. 10.4. Emergency Service Accessibility. The Tribe shall make reasonable provisions for adequate emergency fire, medical, and related relief and disaster services for patrons and employees of the Gaming Facility.

Sec. 10.5. Alcoholic Beverage Service. Standards for alcohol service shall be subject to applicable law.

Sec. 10.6. Possession of firearms shall be prohibited at all times in the Gaming Facility except for state, local, or tribal security or law enforcement personnel authorized by tribal law and by federal or state law to possess fire arms at the Facility.

Sec. 10.7. Labor Relations.

Notwithstanding any other provision of this Compact, this Compact shall be null and void if, on or before October 13, 1999, the Tribe has not provided an agreement or other procedure acceptable to the State for addressing organizational and representational rights of Class III Gaming Employees and other employees associated with the Tribe's Class III gaming enterprise, such as food and beverage, housekeeping, cleaning, bell and door

services, and laundry employees at the Gaming Facility or any related facility, the only significant purpose of which is to facilitate patronage at the Gaming Facility.

Sec. 10.8. Off-Reservation Environmental Impacts.

Sec. 10.8.1. On or before the effective date of this Compact, or not less than 90 days prior to the commencement of a Project, as defined herein, the Tribe shall adopt an ordinance providing for the preparation, circulation, and consideration by the Tribe of environmental impact reports concerning potential off-Reservation environmental impacts of any and all Projects to be commenced on or after the effective date of this Compact. In fashioning the environmental protection ordinance, the Tribe will make a good faith effort to incorporate the policies and purposes of the National Environmental Policy Act and the California Environmental Quality Act consistent with the Tribe's governmental interests.

Sec. 10.8.2. (a) Prior to commencement of a Project, the Tribe will:

(1) Inform the public of the planned Project;

(2) Take appropriate actions to determine whether the project will have any significant adverse impacts on the off- Reservation environment;

(3) For the purpose of receiving and responding to comments, submit all environmental impact reports concerning the proposed Project to the State Clearinghouse in the Office of Planning and Research and the county board of supervisors, for distribution to the public.

(4) Consult with the board of supervisors of the county or counties within which the Tribe's Gaming Facility is located, or is to be located, and, if the Gaming Facility is within a city, with the city council, and if requested by the board or council, as the case may be, meet with them to discuss mitigation of significant adverse off-Reservation environmental impacts;

(5) Meet with and provide an opportunity for comment by those members of the public residing off-Reservation within the vicinity of the Gaming

Facility such as might be adversely affected by proposed Project.

(b) During the conduct of a Project, the Tribe shall:

(1) Keep the board or council, as the case may be, and potentially affected members of the public apprized of the project's progress; and

(2) Make good faith efforts to mitigate any and all such significant adverse off Reservation environmental impacts.

(c) As used in Section 10.8.1 and this Section 10.8.2, the term "Project" means any expansion or any significant renovation or modification of an existing Gaming Facility, or any significant excavation, construction, or development associated with the Tribe's Gaming Facility or proposed Gaming Facility and the term "environmental impact reports" means any environmental assessment, environmental impact report, or environmental impact statement, as the case may be.

Sec. 10.8.3. (a) The Tribe and the State shall, from time to time, meet to review the adequacy of this Section 10.8, the Tribe's ordinance adopted pursuant thereto, and the Tribe's compliance with its obligations under Section 10.8.2, to ensure that significant adverse impacts to the off-Reservation environment resulting from projects undertaken by the Tribe may be avoided or mitigated.

(b) At any time after January 1, 2003, but not later than March 1, 2003, the State may request negotiations for an amendment to this Section 10.8 on the ground that, as it presently reads, the Section has proven to be inadequate to protect the off-Reservation environment from significant adverse impacts resulting from Projects undertaken by the Tribe or to ensure adequate mitigation by the Tribe of significant adverse off-Reservation environmental impacts and, upon such a request, the Tribe will enter into such negotiations in good faith.

(c) On or after January 1, 2004, the Tribe may bring an action in federal court under 25 U.S.C. Sec. 2710(d)(7)(A)(i) on the ground that the State has failed to negotiate in good faith, provided that the.

Tribe's good faith in the negotiations shall also be in issue. In any such action, the court may consider whether the State's invocation of its rights under subdivision (b) of this Section 10.8.3 was in good faith. If the State has requested negotiations pursuant to subdivision (b) but, as of January 1, 2005, there is neither an agreement nor an order against the State under 25 U.S.C. Sec. 2710(d)(7)(B)(iii), then, on that date, the Tribe shall immediately cease construction and other activities on all projects then in progress that have the potential to cause adverse off-Reservation impacts, unless and until an agreement to amend this Section 10.8 has been concluded between the Tribe and the State.

Sec. 11.0. EFFECTIVE DATE AND TERM OF COMPACT.

Sec. 11.1. Effective Date. This Gaming Compact shall not be effective unless and until all of the following have occurred:

(a) The Compact is ratified by statute in accordance with state law;

(b) Notice of approval or constructive approval is published in the Federal Register as provided in 25 U.S.C. 2710(d)(3)(B); and

(c) SCA 11 is approved by the California voters in the March 2000 general election.

Sec. 11.2. Term of Compact; Termination.

Sec. 11.2.1. Effective. (a) Once effective this Compact shall be in full force and effect for state law purposes until December 31, 2020.

(b) Once ratified, this Compact shall constitute a binding and determinative agreement between the Tribe and the State, without regard to voter approval of any constitutional amendment, other than SCA 11, that authorizes' a gaming compact.

(c) Either party may bring an action in federal court, after providing a sixty (60) day written notice of an opportunity to cure any alleged breach of this Compact, for a declaration that the other party has materially breached this Compact. Upon issuance of such a declaration, the complaining party may unilaterally terminate this Compact upon

service of written notice on the other party. In the event a federal court determines that it lacks jurisdiction over such an action, the action may be brought in the superior court for the county in which the Tribe's Gaming Facility is located. The parties expressly waive their immunity to suit for purposes of an action under this subdivision, subject to the qualifications stated in Section 9.4(a).

Sec. 12.0. AMENDMENTS; RENEGOTIATIONS.

Sec. 12.1. The terms and conditions of this Gaming Compact may be amended at any time by the mutual and written agreement of both parties.

Sec. 12.2. This Gaming Compact is subject to renegotiation in the event the Tribe wishes to engage in forms of Class III gaming other than those games authorized herein and requests renegotiation for that purpose, provided that no such renegotiation may be sought for 12 months following the effective date of this Gaming Compact.

Sec. 12.3. Process and Negotiation Standards. All requests to amend or renegotiate this Gaming Compact shall be in writing, addressed to the Tribal Chairperson or the Governor, as the case may be, and shall include the activities or circumstances to be negotiated, together with a statement of the basis supporting the request. If the request meets, the requirements of this Section, the parties shall confer promptly and determine a schedule for commencing negotiations within 30 days of the request. Unless expressly provided otherwise herein, all matters involving negotiations or other amendatory processes under Section 4.3.3(b) and this Section 12.0 shall be governed, controlled, and conducted in conformity with the provisions and requirements of IGRA, including those provisions regarding the obligation of the State to negotiate in good faith and the enforcement of that obligation in federal court. The Chairperson of the Tribe and the Governor of the State are hereby authorized to designate the person or agency responsible for conducting the negotiations, and shall execute any documents necessary to do so.

Sec. 12.4. The Tribe shall have the right to terminate

this Compact in the event the exclusive right of Indian tribes to operate Gaming Devices in California is abrogated by the enactment, amendment, or repeal of a state statute or constitutional provision, or the conclusive and dispositive judicial construction of a statute or the state Constitution by a California appellate court after the effective date of this Compact, that Gaming Devices may lawfully be operated by another person, organization, or entity (other than an Indian tribe pursuant to a compact) within California

Sec. 13.0 NOTICES.

Unless otherwise indicated by this Gaming Compact, all notices required or authorized to be served shall be served by first-class mail at the following address:

Governor
State Capitol
Sacramento, California 95814

Tribal Chairperson
San Pasqual Band of Mission Indians
P.O. Box 365
Valley Center, CA 92082

Sec. 14.0. CHANGES IN IGRA. This Gaming Compact is intended to meet the requirements of IGRA as it reads on the effective date of this Gaming Compact, and when reference is made to the Indian Gaming Regulatory Act or to an implementing regulation thereof, the referenced provision is deemed to have been incorporated into this Compact as if set out in full. Subsequent changes to IGRA that diminish the rights of the State or the Tribe may not be applied retroactively to alter the terms of this Gaming Compact, except to the extent that federal law validly mandates that retroactive application without the State's or the Tribe's respective consent

Sec. 15.0. MISCELLANEOUS.

Sec. 15.1. Third Party Beneficiaries. Except to the extent expressly provided under this Gaming Compact, this Gaming Compact is not intended to, and shall not be construed to, create any right on the

part of a third party to bring an action to enforce any of its terms.

Sec. 15.2. Complete agreement; revocation of prior requests to negotiate. This Gaming Compact, together with all addenda and approved amendments, sets forth the full and complete agreement of the parties and supersedes any prior agreements or understandings with respect to the subject matter hereof.

Sec. 15.3. Construction. Neither the presence in another tribal-state compact of language that is not included in this Compact, nor the absence in this Compact of language that is present in another tribal-state compact shall be a factor in construing the terms of this Compact.

Sec. 15.4. Most Favored Tribe. If, after the effective date of this Compact, the State enters into a Compact with any other tribe that contains more favorable provisions with respect to any provisions of this Compact, the State shall, at the Tribe's request, enter into the preferred compact with the Tribe as a superseding substitute for this Compact; provided that the duration of the substitute compact shall not exceed the duration of this Compact. Compact of language that is present in another tribal-state compact shall be a factor in construing the terms of this Compact.

Sec. 15.6. Representations.

By entering into this Compact, the Tribe expressly represents that, as of the date of the Tribe's execution of this Compact: (a) the undersigned has the authority to execute this Compact on behalf of his or her tribe and will provide written proof of such authority and ratification of this Compact by the tribal governing body no later than October 9, 1999; (b) the Tribe is (i) recognized as eligible by the Secretary of the Interior for special programs and services provided by the United States to Indians because of their status as Indians, and (ii) recognized by the Secretary of the Interior as possessing powers of self-government. In entering into this Compact, the State expressly relies upon the foregoing representations by the Tribe, and the State's entry

into the Compact is expressly made contingent upon the truth of those representations as of the date of the Tribe's execution of this Compact. Failure to provide written proof of authority to execute this Compact or failure to provide written proof of ratification by the Tribe's governing body will give the State the opportunity to declare this Compact null and void.

IN WITNESS WHEREOF, the undersigned sign this Compact on behalf of the State of California and the San Pasqual Band of Mission Indians.

Done at Sacramento, California, this 10th day of September 1999.

STATE OF CALIFORNIA

/s/ Gray Davis
By Gray Davis
Governor of the State
Of California

SAN PASQUAL BAND OF MISSION INDIANS

/s/ Allen Lawson
By Allen Lawson
Chairperson of the
San Pasqual Band
Of Mission Indians

ATTEST:

/s/ Bill Jones
By Bill Jones
Secretary of State, State of California

Consistent with 25 U.S.C.A.. Sec. 2710 (d)(8), the Compact between the Sovereign Nation of the San Pasqual Band of Digueno Mission Indians of California and the Sovereign State of California dated September 10, 1999, is hereby approved on this 5th day of May, 2000, by the Assistant Secretary - Indian Affairs, United States Department of the Interior.

UNITED STATES DEPARTMENT OF THE INTERIOR

/s/ Kevin Gover
Kevin Gober
Assistant Secretary – Indian Affairs

ADDENDUM "A" TO TRIBAL-STATE GAMING COMPACT BETWEEN THE SAN PASQUAL BAND OF MISSION INDIANS AND THE STATE OF CALIFORNIA

Modification No. 1

Section 6.4.4(d) is modified to read as follows:

Section 6.4.4(d) is modified to read as follows:

(d) (1) Notwithstanding subdivision (a), the Tribe may employ or retain in its employ a person whose application for a determination. of suitability, or for a renewal of such a determination, has been denied by the State Gaming Agency, if the person is an enrolled member of the Tribe, as defined in this subdivision, and if ~~(i)~~ (A) the person holds a valid and current license issued by the Tribal Gaming Agency that must be renewed at least biennially; (B) the denial of the application by the State Gaming Agency is based solely on activities, conduct, or associations that antedate the filing of the person's initial application to the State Gaming Agency for a determination of suitability; and ~~(iii)~~ (C) the person is not an employee or agent of any other gaming operation.

(2) For purposes of this subdivision, "enrolled member" means a person who is either: ~~(a)~~ (A) a person certified by the Tribe as having been a member of the Tribe for at least five (5) years; or ~~(b)~~ (B) a holder of confirmation of membership issued by the Bureau of Indian Affairs; or (C), if the Tribe has 100 or more enrolled members as of the date of execution of this Compact. a person certified by the Tribe as being a member pursuant to criteria and standards specified in a tribal Constitution that has been approved by the Secretary of the Interior.

Modification No.2

Section 8.4.1(e) is modified to read as follows:

(e) The Tribe may object to a State Gaming Agency regulation on the ground that it is unnecessary, unduly burdensome, conflicts with a published final regulation of the NIGC, or is unfairly discriminatory, and may seek repeal or amendment of the regulation through the dispute resolution process of Section 9.0; provided that. if the regulation of the Stale Gaming Agency conflicts with a final published regulation of the NIGC, the NIGC regulation shall govern pending conclusion of the dispute resolution process.

Modification No.3

Section 12.2 is modified to read as follows:

Sec. 12.2. (a) This Gaming Compact is subject to renegotiation in the event the Tribe wishes to engage in forms of Class III gaming other than those games authorized herein and requests renegotiation for that purpose, provided that no such renegotiation may be sought for 12 months following the effective date of this Gaming Compact. (

(b) Nothing herein shall be construed to constitute a waiver of any rights under IGRA in the event of an expansion of the scope of permissible gaming resulting from a change in state law.

Modification No.4

Section 11.2.1(a) is modified to read:

Sec. 11.2.1. Effective (a) Once effective this Compact shall be in full force and effect for state law purposes until December 31, 2020. No sooner than eighteen (18) months prior to the aforementioned termination date. either party may request the other party to enter into negotiations to extend this Compact or to enter into a new compact. If the parties have not agreed to extend the date of this Compact or entered into a new compact by the termination date, this Compact will automatically be extended to June 30. 2022, unless the parties have agreed to an earlier termination date.

Modification No. 5
Section 12.4 is modified to read as follows:

Sec. 12.4. ~~The Tribe shall have the right to terminate this Compact.~~ In the event the exclusive right of Indian tribes to operate Gaming Devices in California is abrogated by the enactment, amendment, or repeal of a state statute or constitutional provision, or the conclusive and dispositive judicial construction of a statute or the state Constitution by a California appellate court after the effective date of this Compact, that Gaming Devices may lawfully be operated by another person, organization, or entity (other than an Indian tribe pursuant to a compact) within California, the Tribe shall have the right to: (i) termination of this Compact. In which case the Tribe will lose the right to operate Gaming Devices and other Class III gaming. or iii) continue under the Compact with an entitlement to a reduction of the rates specified in Section 5.1(a) following conclusion of negotiations, to provide for (a) compensation to the State for actual and reasonable costs of regulation. As determined by the state Department of Finance: (b) reasonable payments to local governments impacted by tribal government gaming: eel grants for programs designed to address gambling addiction: (d) and such assessments as may be permissible at such time under federal law.

Modification No.6
Section 10.2(d) is modified to read as'follows:

(d) Carry no less than five million dollars ($5,00.0,000) in public liability insurance for patron claims, and that the Tribe shall request its insurer to ~~provide reasonable assurance that those claims will be paid~~ settle all valid claims; provided that nothing herein requires the Tribe to agree to liability for punitive damages, any intentional acts not covered by the insurance policy, or attorneys' fees. On or before the effective date of this Compact or not less

than 30 days prior to the commencement of Gaming Activities under this Compact, whichever is later, the Tribe shall adop.t - and make available to patrons a tort liability ordinance sening forth the ferms and conditions, ifany, under which the Tribe waives irrununity to suit for money damages resulting from intentional or negligent injuries to person or property at the Gaming Facility or in connection with the Tribe's Gaming Operation, including procedures for processing any claims for such money damages; provided.that nothing in this Section shall require the Tribe to waive its immunity to suit except to the extent of the policy limits and insurance coverage set out above.

Modification No.7

Section 10.2(k) is modified to read as follows:

(k) Comply with provisions of the Bank Secrecy Act, P.L. 91-508, October 26, 1970, 31 U.S.C. Sec. 5311-5314, as amended, and all reporting requirements of the Internal Revenue Service, insofar as such provisions and reporting requirements are applicable to casinos.

IN WITNESS WHEREOF, the undersigned sign this Addendum on behalf of the State of California and the San Pasqual Band of Mission Indians.

STATE OF CALIFORNIA	SAN PASQUAL BAND OF MISSION INDIANS
/s/ Gray Davis	/s/ Allen E. Lawson, Jr.
By: Gray Davis Governor of the State of California	By: Allen E. Lawson, Jr. Chairperson of the San Pasqual Band of Mission Indians
Executed this 8th day of October, 1999, at Sacramento, California	Executed this 23rd day of September, 1999, at San Diego, California

ATTEST:

/s/ Bill Jones

By Bill Jones
Secretary of State, State of California

APPENDIX – L

APPENDIX L

[SEAL]

AMENDMENT TO TRIBAL-STATE COMPACT BETWEEN THE STATE OF CALIFORNIA AND PAUMA BAND OF LUISENO MISSION INDIANS OF THE PAUMA & YUIMA RESERVATION

WHEREAS, the State of California (hereinafter "the State") and the Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation (hereinafter "the Tribe") entered into a compact in 1999 (hereinafter the "1999 Compact"); and

WHEREAS, the State and the Tribe have agreed to revise the 1999 Compact to promote good relations between tribal, state, and local governments and to enhance tribal economic development and self-sufficiency; and

WHEREAS, the Tribe agrees to make a fair revenue contribution to the State, to enter into arrangements to mitigate to the extent practicable the off reservation environmental and direct fiscal impacts on local communities and local governments, and to offer additional consumer protections; and

WHEREAS, in recognition of the fair revenue contribution and the measures enhancing protections for local governments and the public and to provide a sound basis for the Tribe's decisions with respect to investment in, and operation of, its Gaming Activities, the State agrees to amend the 1999 Compact to enhance the Tribe's exclusive right to operate slot machines and banked and percentage card games in California, to extend the term of the Compact, and to afford the opportunity to operate additional Gaming Devices; and

WHEREAS, the Tribe wishes to reaffirm its pledge to share revenues with Non-Compact Tribes; and

WHEREAS, the State and the Tribe have concluded that this amendment to the 1999 Compact provides for a fair contribution to the State from the Tribe's Gaming Operation, enhances the Tribe's exclusivity over its Gaming Activities, protects the interests of the Tribe and the California public, and will promote and secure long-term stability, mutual respect, and mutual benefits; and

WHEREAS, the State and the Tribe recognize that this amendment is authorized and negotiated and shall take effect pursuant to the Indian Gaming Regulatory Act ("IGRA"); and

WHEREAS, the State and the Tribe agree that all terms of this amendment to the 1999 Compact (collectively the "Amended Compact") are intended to be binding and enforceable.

NOW, THEREFORE, the Tribe and the State hereby amend the 1999 Compact as follows:

I. REVENUE CONTRIBUTION

A. Section 4.3.1 is repealed and replaced by the following:

Section 4.3.1.

(a) The Tribe is entitled to operate the following number of Gaming Devices pursuant to the conditions set forth in Section 4.3.3:

(i) 350 Gaming Devices; and

(ii) 700 Gaming Devices operated pursuant to licenses issued in accordance with former Section 4.3.2.2 of the 1999 Compact, which licenses shall be maintained during the

term of this Amended Compact pursuant to Section 4.32.2 herein.

(b) The Tribe may operate Gaming Devices additional to those specified in subparagraphs (i) and (ii) of subdivision (a) only by paying, in addition to the fees specified in Section 4.3.3, subdivision (a), within 30 days of the end of each calendar quarter to such agency, trust, fund or entity, as the State Director of Finance, pursuant to law, from time to time, shall specify to the Tribe in writing, the fees specified below for each additional Gaming Device:

Additional Gaming Devices in Operation				Annual Fee per Gaming Device
(i)	1,051	to	1,500	$8,500
(ii)	1,501	to	2,000	$11,000
(iii)	2,001	to	2,500	$12,000
(iv)	2,501	to	3,000	$13,200
(v)	3,001	to	3,500	$17,000
(vi)	3,501	to	4,000	$20,000
(vii)	4,000	to	4,500	$22,500
(viii)	4,500 and above			$25,000

The number of additional Gaming Devices operated each quarter will be calculated based upon the maximum number of Gaming Devices operated during that quarter. If this amendment becomes effective during a calendar quarter, payment shall be prorated for the number of the days remaining in that quarter.

(c) Fee payments pursuant to subdivision (b) shall be accompanied by a written certification of the maximum number of Gaming Devices operated during that calendar quarter. Such certification shall confirm the number of Gaming Devices operated pursuant to subparagraphs (i) and (ii) of subdivision (a), shall specify the number operated during that quarter pursuant to subdivision

(b), and shall show the computation for the quarterly fees due for the additional Gaming Devices operated pursuant to subdivision (b), by adding the annual fee due per each additional Gaming Device pursuant to the incremental level applicable to the Gaming Device, as set forth in subparagraphs (i)-(viii) of subdivision (b), and dividing that sum by 4 (to calculate the quarterly amount).

(d) If any portion of the fee payments under subdivision (b) herein, Section 4.3.2.2, subdivision (a), or Section 4.3.3, subdivision (c) is overdue, the Tribe shall pay to the State Gaming Agency for purposes of deposit into the appropriate fund, the amount overdue plus interest accrued thereon at the rate of 1.0% per month or the maximum rate permitted by state law for delinquent payments owed to the State, whichever is less.

(e) If any portion of the fee payments under subdivision (b) herein is overdue after the State Gaming Agency has provided written notice to the Tribe of the overdue amount with an opportunity to cure of at least 15 business days, and if more than 60 days has passed from the due date, then the Tribe shall cease operating the additional Gaming Devices under subdivision (b) until full payment is made; provided further that if any portion of the fee payments under subdivision (b) is overdue as specified above on more than two occasions, the Tribe shall be required to cease operating the additional Gaming Devices under subdivision (b) for an additional 30 days after full payment of all outstanding amounts has been made. For purposes of this subdivision, the notice herein shall be provided by certified mail to the address provided pursuant to Section 13.0 as well as to the Tribal Gaming Agency at the last address provided to the State Gaming Agency.

B. Sections 2.15, 4.3.2(a)(iii), 4.3.2.3, and 5.0 are repealed.

C. Section 4.3.2.2 is repealed and replaced by the following:

Section 4.3.2.2.

(a) The Tribe shall maintain its existing licenses to operate Gaming Devices by paying to the State Gaming Agency for deposit into the Revenue Sharing Trust Fund the following fee within 30 days of the end of each calendar quarter: (i) until March 31, 2008, $47,604.00 (forty-seven thousand six hundred four dollars); and (ii) after March 31,2008, or the completion of its new Gaming Facility, whichever comes first, $500,000.00 (five hundred thousand dollars). If this amendment becomes effective during a calendar quarter, payment shall be prorated for the number of days remaining in that quarter.

(b) The Tribe has determined in consultation with other tribes that are parties to amended compacts having the provisions in Sections 4.3.1 and 4.3.3 herein that their contributions to the Revenue Sharing Trust Fund pursuant to this Amended Compact will collectively exceed the aggregate amount they were paying under the 1999 Compact.

D. Section 4.3.3 is repealed and replaced by the following:

Section 4.3.3.

(a) The Tribe shall make annual payments to the State of $5.75 million (five million seven hundred fifty thousand dollars) for 18 years, in the manner provided in subdivisions (b) and (c) below, commencing on January 1,2005. The Tribe understands that it is the State's intention to assign these and other tribes' revenue contributions totaling at least $100 million annually to a third party for purposes of securitizing the 18-year revenue stream in the form of bonds that can be issued to investors. The payment specified herein has been negotiated

between the parties as a fair contribution to be made on an annual basis without reduction for 18 years, based upon market conditions at the location of the Tribe's existing land specified in Section 4.3.5, as of year end 2003, in light of the obligations undertaken in Section 4.3.3, and represents at least 13% of the Tribe's net win in 2003.

(b) The Tribe and the State will use their reasonable efforts and cooperate in good faith to aid the issuance of the bonds referenced in subdivision (a) in accordance with Exhibit B. Commencing January 1, 2005, the Tribe shall remit to such agency, trust, fund or entity, as the State Director of Finance, pursuant to law, from time to time, shall specify to the Tribe in writing, its fixed annual payment referenced in subdivision (a) in four equal quarterly payments due on the first business day of each January, April, July and October.

(c) Notwithstanding subdivision (b), if the State Director of Finance determines that the bonds cannot be issued successfully, then after providing notice of such determination to the Tribe, the Tribe's payments specified in subdivision (a) shall be made semiannually to such agency, trust, fund or entity, as the State Director of Finance, pursuant to law, from time to time, shall specify to the Tribe in writing, in two equal semiannual payments, due January 1 and July 1 of each year.

(d) Following the conclusion of the Tribe's annual payments for the 18-year period specified in subdivision (a) and for each year during the remaining Compact term as defined in Section 11.2.1 herein, the Tribe shall remit to such agency, trust, fund or entity, as the State Director of Finance, pursuant to law, from time to time, shall specify to the Tribe in writing, the annual payment set forth in subdivision (a), or if it is less, 10% of the annual net win attributable to the Gaming Devices specified in Section 4.3.1, subdivision (a)(i) and (ii). For purposes of this subdivision (d):

(i) The Tribe shall remit two equal semiannual payments to the State Gaming Agency within 30 days of January 1 and July 1 of each year.

(ii) "Net win" means the gross revenue ("drop") less all prizes and payouts, fills, hopper adjustments and participation fees, and each semiannual payment shall be calculated by multiplying the average net win per Gaming Device for the preceding semiannual period specified in subparagraph (i) by the number of Gaming Devices specified in Section 4.3.1, subdivision (a)(i) and (ii). Participation fees shall be defined as payments made to Gaming Resource Suppliers on a periodic basis by the Gaming Operation for the right to lease or otherwise offer for play Gaming Devices.

(iii) The semiannual payments based upon 10% of the net win attributable to the number of Gaming Devices specified in Section 4.3.1, subdivision (a)(i) and (ii) shall be accompanied by a certification of the net win calculation prepared by an independent certified public accountant who is not employed by the Tribe, the Tribal Gaming Agency, or the Gaming Operation, is only otherwise retained by any of these entities to conduct regulatory audits, and has no financial interest in any of these entities. The State Gaming Agency may audit the net win calculation, and if it determines that the net win is understated, will promptly notify the Tribe and provide a copy of the audit. The Tribe within twenty (20) days will either accept the difference or provide a reconciliation satisfactory to the State Gaming Agency. If the Tribe accepts the difference or does not provide a reconciliation satisfactory to the State Gaming Agency, the Tribe must immediately pay the amount of the resulting deficiency plus accrued interest thereon at the rate of 1.0% per month or the maximum rate

permitted by state law for delinquent payments owed to the State, whichever is less. If the Tribe does not provide 'a reconciliation satisfactory to the State Gaming Agency, the Tribe, once payment is made, may commence dispute resolution under Section 9.0. The parties expressly acknowledge that the certifications and information related to payments herein are subject to subdivision (c) of Section 7.4.3.

(e) Notwithstanding anything to the contrary in Section 9.0, in the event the bonds specified in subdivision (a) are issued, any failure of the Tribe to remit its fixed annual payment referenced in subdivision (a) pursuant to subdivision (b) will entitle the State to immediately seek injunctive relief in federal or state court, at the State's election, to compel the payments, plus accrued interest thereon at the rate of 1.0% per month or the maximum rate permitted by State law for delinquent payments owed to the State, whichever is less; and further, the Tribe expressly consents to be sued in either court and waives its right to assert sovereign immunity against the State in any such proceeding to enforce said payment obligations. Failure to make timely payment shall be deemed a material breach of this Amended Compact.

F. A new Section 4.3.4 is added as follows:

Section 4.3.4. For purposes of Sections 4.3.1, 4.3.2.2, and 4.3.3, the State Gaming Agency shall be the California Gambling Control Commission, unless the State provides otherwise by written notice pursuant to Section 13.0.

G. A new Section 4.3.5 is added as follows:.

Section 4.3.5. Except pursuant to the express concurrence of the Governor required by Section 20(b)(1)(A) of IGRA, the Tribe may operate the Gaming Devices specified in Section 4.3.1, subdivisions (a) and (b) only on its Indian lands existing as of July 1,2004, at the location of the

Tribe's existing Gaming Operation located in San Diego County. Notwithstanding anything to the contrary in this Amended Compact, however, any independent structures or other improvements ancillary to the Gaming Activities, in which no Class III gaming is conducted, including any roads, parking lots, or walkways, may be on contiguous land to the aforesaid Indian lands (i) which is held by the Tribe in fee where the Tribe's activities thereon are subject to the jurisdiction of State law and the State courts, or (ii) which is Indian lands within the meaning of IGRA.

II. EXCLUSIVITY

Section 3.0 is repealed and replaced with the following:

Section 3.0. Authorization and Exclusivity of Class III Gaming.

Section 3.1. The Tribe is hereby authorized and permitted to engage in only the Gaming Activities expressly referred to in Section 4.0 and shall not engage in Class III gaming that is not expressly authorized in that Section.

Section 3.2. In recognition of the Tribe's agreement to make the payments specified in Section 4.3.1, subdivision (b), and Section 4.3.3, subdivisions (a) and (d), the Tribe shall have the following rights:

(a) In the event the bonds referenced in Section 4.3.3, subdivision (a) are issued securitized by the Tribe's annual payments referenced therein, during the life of said bonds and in order to protect the Tribe's ability to make the payments underlying said bonds, the State shall not authorize any person or entity other than an Indian tribe with a federally authorized compact to engage in any Gaming Activities specified in subdivisions (a) and (b) of Section 4.1 of this Amended Compact within the Tribe's core geographic market, as defined below.

Nothing herein is intended to preclude the State Lottery from offering any lottery games or devices that are authorized by the California Constitution as it exists as of July 1, 2004.

(b) For purposes of this Section, the Tribe's core geographic market, as specified in subdivision (a), comprises all of the following Counties: San Diego, Riverside, Orange and Los Angeles, where collectively over 60% of the patrons of the Tribe's Gaming Facility reside.

(c) In the event that the State authorizes any person or entity other than an Indian tribe with a federally authorized compact to engage in Gaming Activities in violation of subdivision (a), the Tribe shall have the right to enjoin such gaming or the authorization of said gaming as a substantial impairment of the right specified in subdivision (a), which is necessary to assure the marketability of the bonds referenced in Section 4.3.3, subdivision (a), to protect the bondholders of said bonds, and to afford the Tribe the stability in its Gaming Operation bargained for in return for the issuance of the bonds; provided, however, that no remedy other than an injunction is available against the State or any of its political subdivisions for a violation of subdivision (a), and the parties agree that such substantial impairment of the right specified in subdivision (a) will cause irreparable harm that cannot be adequately remedied by damages.

(d) Where the bond referenced in Section 4.3.3 subdivision (a) has been issued securitized by the Tribe's annual payments, in the event that the State authorizes any person or entity other than an Indian tribe with a federally authorized compact to engage in Gaming Activities in violation of subdivision (a) and said person or entity commences within the Tribe's core geographic market said prohibited Gaming Activities, the Tribe shall have the right to cease the payments specified in Section 4.3.1, subdivision (b), Section 4.3.2.2, subdivision (a), and Section 4.3.3, subdivision (a), until said person or

entity ceases said Gaming Activities or reaches an agreement with the Tribe to share revenues with it in an effort to mitigate the irreparable harm.

(e) In the event the bonds securitized in part by the Tribe's annual payments referenced in Section 4.3.3, subdivision (a) are not issued or following the conclusion of the Tribe's annual payments securitizing the issued bonds, the Tribe shall be relieved of its obligation to make the payments specified in Section 4.3.1, subdivision (b), Section 4.3.2.2, and Section 4.3.3, subdivisions (c) and (d), if and only if any person or entity other than an Indian tribe with a federally authorized compact engages in any Gaming Activities specified in subdivision (a) of Section 4.1 of this ,Amended Compact within the Tribe's core geographic market, until such time that such gaming ceases.

(f) Notwithstanding the Tribe's cessation of payments under Section 4.3.1, subdivision (b), Section 4.3.2.2, or Section 4.3.3, subdivisions(a),(c), and (d), where the Tribe nonetheless operates more than 2,500 Gaming Devices, it shall pay the amounts set forth in Section 4.3.1, subdivision (b), with respect to Gaming Devices above 2,500.

Section 3.3. While the Tribe is making annual payments to the State under Section 4.3.3, subdivision (a), the tribe shall not revoke its ordinance authorizing Class III gaming on its Indian lands, shall not unilaterally terminate this Amended Compact pursuant to either Section 12.4 or any other law, and shall continue making said annual payments even if it invokes Section 15.4.

III. TESTING OF GAMING DEVICES

A. The following new Section is added after Section 7.4.5 of the 1999 Compact:

Section 7.5. Testing of Gaming Devices.

(a) No Gaming Device may be offered for play unless:

(i) The manufacturer or distributor which sells, leases, or distributes such Gaming Device (A) has applied for a finding of suitability by the State Gaming Agency at least 15 days before it is offered for play, (B) has not been found to be unsuitable by the State Gaming Agency, and (C) has been licensed by the Tribal Gaming Agency;

(ii) The software for the game authorized for play on the Gaming Device has been tested, approved and certified by an independent or state governmental gaming test laboratory (the "Gaming Test Laboratory") as operating in accordance with either the standards of Gaming Laboratories International, Inc. known as GLI-11 and GLI-12, or the technical standards approved by the State of Nevada, or such other technical standards as the State Gaming Agency and the Tribal Gaming Agency shall agree upon, which agreement shall not be unreasonably withheld, and a copy of said certification is provided to the State Gaming Agency by electronic transmission or by mail unless the State Gaming Agency waives receipt of copies of certification;

(iii) The software for the game authorized for play on the Gaming Device is tested by the Tribal Gaming Agency to ensure that each game authorized for play on the Gaming Device has the correct electronic signature prior to insertion into the Gaming Device; and

(iv) The hardware and associated equipment for the Gaming Device has been tested by the Gaming Test Laboratory to 10 ensure operation in accordance with the manufacturer's specifications.

(b) The Gaming Test Laboratory shall be an independent or state governmental gaming test laboratory recognized in the gaming industry which (i) is competent and qualified to conduct scientific tests and evaluations of Gaming Devices, and (ii) is licensed or approved by any of the following states: Arizona, California, Colorado, Illinois, Indiana, Iowa, Michigan, Missouri, Nevada, New Jersey, or Wisconsin. The Tribal Gaming Agency shall submit to the State Gaming Agency documentation that demonstrates the Gaming Test Laboratory satisfies (i) and (ii) herein, within thirty (30) days of the effective date of this Amended Compact, or if such use follows such effective date, within fifteen (15) days prior to reliance thereon. If, at any time, the Gaming Test Laboratory license and/or approval required by (ii) herein is suspended or revoked by any of those states or the Gaming Test Laboratory is found unsuitable by the State Gaming Agency, then the State Gaming Agency may reject the use of such Gaming Test Laboratory, and upon such rejection, the Tribal Gaming Agency shall ensure that such Gaming Test Laboratory discontinues its responsibilities under this Section.

(c) The Tribal Gaming Agency shall ensure that compliance with subdivisions (a) and (b) is audited annually by an independent auditor and shall provide the results of such audits to the State Gaming Agency within five (5) business days of completion. For purposes of this subdivision, an independent auditor shall be a certified public accountant and/or certified internal auditor who is not employed by the Tribe, the Tribal Gaming Agency, or the Gaming Operation, has no financial interest in any of these entities, and is only otherwise retained by any of these entities to conduct regulatory audits or audits under Section 8.1.8.

(d) The State Gaming Agency may inspect the Gaming Devices in operation at the Gaming Facility on a random basis not to exceed four (4) times annually to confirm that they operate and play

properly pursuant to the manufacturer's technical standards. Said random inspections conducted pursuant to this subdivision shall occur during normal business hours from 7 a.m. to 5 p.m. outside of Fridays, weekends, and holidays and shall not remove from play more than 5% of the Gaming Devices operating at the Gaming Facility. The State Gaming Agency shall provide notice to the Tribal Gaming Agency of such inspection prior to the commencement of the random inspection, and the Tribal Gaming Agency may accompany the State Gaming Agency inspector(s). The State Gaming Agency may conduct additional inspections only upon reasonable belief of any irregularity and after informing the Tribal Gaming Agency of the basis for such belief.

(e) The Tribal Gaming Agency shall provide to the State Gaming Agency copies of its regulations for technical standards applicable to the Tribe's Gaming Devices upon the effective date of this Amendment and at least thirty (30) days before the effective date of any revisions.

(f) For purposes of this Section 7.5, the State Gaming Agency shall be the California Gambling Control Commission, unless the State provides otherwise by written notice pursuant to Section 13.0

IV. BUILDING CODES

Subdivision (d) of Section 6.4.2 is repealed and subdivisions 6.4.2(d)-(k) are added as follows:

Section 6.4.2.

(d) Section 6.4.2, subdivision (b), of the 1999 Compact shall apply to any Gaming Facility constructed prior to the effective date of this amendment and subdivisions (e) through (k) herein shall apply to the construction of any Gaming Facility after the effective date of this Amendment, and to any reconstruction, alteration of, or addition

to, any existing Gaming Facility occurring after said effective date ("Covered Gaming Facility Construction").

(e) In order to assure the protection of the health and safety of all Gaming Facility patrons, guests, and employees, the Tribe shall adopt or has already adopted, and shall maintain throughout the term of this Compact, an ordinance that requires any Covered Gaming Facility Construction to meet . or exceed the California Building Code and the Public Safety Code applicable to the city or county in which the Gaming Facility is located as set forth in Titles 19 and 24 of the California Code of regulations, as those regulations may be amended during the term of this Compact, including but not limited to, codes for building, electrical, energy, mechanical, plumbing, fire, and safety ("the Applicable Codes"). Notwithstanding the foregoing, the Tribe need not comply with any standard that specifically applies in name or in fact only to tribal facilities. Without limiting the rights of the State under this Section, reference to Applicable Codes is not intended to confer jurisdiction upon the State or its political subdivisions. For purposes of this Section, the terms "building official" and "code enforcement agency" as used in Title 19 and 24 of the California Code of Regulations mean the Tribal Gaming Agency or such other Tribal government agency or official as may be designated by the Tribe's law.

(f) In order to assure compliance with the Applicable Codes, in all cases where said codes would otherwise require a permit, the Tribe shall employ for any Covered Gaming Facility Construction appropriate plan checkers or review firms that either are California licensed architects or engineers with relevant experience or are on the list, if any, of approved plan checkers or review firms provided by the city or county in which the Gaming Facility is located, and employ project inspectors that have been either approved as Class 1 certified inspectors by the Division of the State Architect or approved as Class A certified inspectors by the Office of Statewide

Health Planning and Development or their successors. The Tribe shall require said inspectors to report in writing any failure to comply with the Applicable Codes to the Tribal Gaming Agency and an agency designated by the State (the "State Designated Agency"). The plan checkers, review firms, and project inspectors shall hereinafter be referred to as "Inspector(s)."

(g) In all cases, where the Applicable Codes would otherwise require plan check, the Tribe shall require those responsible for any Covered Gaming Facility Construction to provide the documentation set forth be the Tribe shall cause the design and construction calculations, and plans and specifications that form the basis for the planned Covered Gaming Facility Construction (the "Design and Building Plans") to be provided to the State Designated Agency within fifteen (15) days of their completion.

(i) In the event that material changes to a structural detail of the Design and Building Plans will result from contract change orders or any other changes in the Design and Building Plans, the Tribe shall provide such change orders or other changes to the State Designated Agency within five (5) days of the change's execution or approval;

(ii) In the event that material changes to a structural detail of the Design and Building Plans will result from contract change orders or any other changes in the Design and Building Plans, the Tribe shall provide such change orders or other changes to the State Designated Agency within five (5) days of the change's execution or approval;

(iii) The Tribe shall maintain during construction all other contract change orders for inspection and copying by the State Designated Agency upon its request;

(iv) The Tribe shall maintain the Design and Building Plans for the term of this mended Compact.

(h) The State Designated Agency may designate an agent or agents to be given reasonable notice of each inspection by an Inspector required by Section 108 of the California Building Code, and said State agents may accompany the Inspector on any such inspection. The Tribe agrees to correct any Gaming Facility condition noted in said inspection required by Section 108 that does not meet the Applicable Codes (hereinafter "deficiency"). Upon not fewer than three (3) business days' notice to the Tribal Gaming Agency, except in circumstances posing an immediate threat to the life or safety of any person, in which case no advance notice is required, the State Designated Agency shall also have the right to conduct an independent inspection of the Gaming Facility to verify compliance with the Applicable Codes before public occupancy and shall report to the Tribal Gaming Agency any alleged deficiency; provided, however that prior to any exercise by the State of its right to inspect without notice based upon alleged circumstances posing an immediate threat to the life or safety of any person, the State Designated Agency shall provide to the Tribal Gaming Agency notice in writing specifying in reasonable detail those alleged circumstances.

(i) Upon final certification by the Inspector that Gaming Facility . meets Applicable Codes, the Tribal Gaming Agency shall forward the Inspector's certification to the State Designated Agency within ten (10) days of issuance. If the State Designated Agency objects to that certification, the Tribe shall make a good faith effort to address the State's concerns, but if the State Designated Agency does not withdraw its objection, the matter will be resolved in accordance with the dispute resolution provisions of Section 9.0.

(j) Any failure to remedy within a reasonable period of time any material and timely raised

deficiency shall be deemed a violation of the Compact unless the State has acted unreasonably in reporting the deficiency to the Tribe, and furthermore, any deficiency that poses a serious or significant risk to the health or safety of any occupants shall be grounds for the State Designated Agency to prohibit occupancy of the affected portion of the Gaming Facility pursuant to a court order until the deficiency is corrected.

(k) The Tribe shall also take all necessary steps to (i) reasonably ensure the ongoing availability of sufficient and qualified fire suppression services to the Gaming Facility and (ii) reasonably ensure that the Gaming Facility satisfies all requirements of Title 19 of the California Code of Regulations applicable to similar facilities in the city or county in which the Gaming Facility is located. Not more than sixty (60) days after the effective date of the Amendment, and not less than biennially thereafter, and upon at least ten (10) days' notice to the State Designated Agency, the Gaming Facility shall be inspected, at the Tribe's expense, by a Tribal official, if any, who is responsible for fire protection on the Tribe's lands, or by an independent expert, for purposes of certifying that the Gaming Facility meets a reasonable standard of fire safety and life safety. The State Designated Agency shall be entitled to designate and have a qualified representative or representatives present during the inspection. During such inspection, the State's representative(s) shall specify to the Tribal official or independent expert, as the case may be, any condition which the representative(s) reasonably believes would preclude certification of the Gaming Facility as meeting a reasonable standard of fire safety and life safety. Within fifteen (15) days of the inspection, the Tribal official or independent expert shall issue a report on the inspection, identifying any deficiency in fire safety or life safety at the Gaming Facility or in the ability' of the Tribe to meet reasonably expected fire suppression needs of the Gaming Facility. Within fifteen (15) days after the issuance of the report, the Tribal official or independent expert shall also

require and approve a specific plan for correcting deficiencies, whether in fire safety at the Gaming Facility or in the Tribe's ability to meet the reasonably expected fire suppression needs of the Gaming Facility, including those identified by the State's representative(s). A copy of the report shall be served on the State Designated Agency, upon delivery of the report to the Tribe. Immediately upon correction of all deficiencies identified in the report, the Tribal official or independent expert shall certify in writing to the State Designated Agency that all previously identified deficiencies have been corrected. Any failure to correct all deficiencies identified in the report within a reasonable period of time shall be deemed a violation of the Compact, and any failure to promptly correct those deficiencies that pose a serious or significant risk to the health or safety of any occupants shall be a violation of the Compact and grounds for the State Gaming Agency or other State Designated Agency to prohibit occupancy of the affected portion of the Gaming Facility pursuant to a court order until the deficiency is corrected.

V. PATRON DISPUTES

A. Section 8.1.10(d) of the 1999 Compact is repealed and replaced by the following:

Section 8.1.10(d). The Tribal Gaming Agency shall promulgate regulations governing patron disputes over the play or operation of any game, including any refusal to pay a patron any alleged winnings from any Gaming Activities, which regulations must meet the following minimum standards:

(i) A patron who makes a complaint to personnel of the Gaming Operation over the play or operation of any game within seven (7) days of said play or operation shall be advised in writing of his or her right to request, within fifteen (15) days of the date of said dispute, resolution of the complaint by the Tribal

Gaming Agency, and if dissatisfied with the resolution, to seek binding arbitration of the dispute before a retired judge pursuant to the terms and provisions in subparagraph (iii).

(ii) Upon request by the patron for a resolution of his or her complaint, the Tribal Gaming Agency shall conduct an investigation, shall provide to the patron a copy of its regulations concerning patron complaints, and shall render a decision consistent with federal gaming standards. The decision shall be issued within sixty (60) days of the patron's request, shall be in writing, shall be based on the facts surrounding the dispute, and shall set forth the reasons for the decision.

(iii) If the patron is dissatisfied with the decision of the Tribal Gaming Agency, or no decision is issued within the sixty (60) day period, the patron may request that any such complaint over any claimed prizes or winnings and the amount thereof, be settled by binding arbitration before a single arbitrator, who shall be a retired judge, in accordance with the streamlined arbitration rules and procedures of JAMS (or if those rules no longer exist, the closest equivalent). Upon such request, the Tribe shall consent to such arbitration and agree to abide by the decision of the arbitrator; provided, however, that if any alleged winnings are found to be a result of a mechanical, electronic or electromechanical failure, which is not due to the intentional acts or gross negligence of the Tribe or its agents, the arbitrator shall deny the patron's claim for the winnings but shall award reimbursement of the amounts wagered by the patron which were lost as a result of any said failure. To effectuate such consent, he Tribe shall, in the exercise of its sovereignty, waive its right to assert sovereign immunity in connection with the arbitrator's jurisdiction and in any action to (A) enforce the parties' obligation to arbitrate, (B)

confirm, correct, modify, or vacate the arbitral award rendered in the arbitration, or (C) enforce or execute a judgment based upon said award. The cost and expenses of such arbitration shall be initially borne by the Tribe but the arbitrator shall award to the prevailing party its costs and expenses (but not attorney fees). Any party dissatisfied with the award of the arbitrator may at the party's election invoke the JAMS Optional Arbitration Appeal Procedure (and if those rules no longer exist, the closest equivalent); provided that the party making such election must bear all costs and expenses of JAMS and the arbitrators associated with the Appeal Procedure regardless of the outcome.

VI. THIRD PARTY INJURIES

A. Section 10.2(d) of the 1999 Compact is repealed and replaced by the following:

Section 10.2(d)

(i) The Tribe shall obtain and maintain a commercial general liability insurance policy consistent with industry standards for non-tribal casinos and underwritten by an insurer with an A.M. Best rating of A or higher ("Policy") which provides coverage of no less than $10 million per occurrence for bodily injury, property damage, and personal injury arising out of, connected with, or relating to the operation of the Gaming Facility or Gaming Activities. In order to effectuate the insurance coverage, the Tribe shall waive its right to assert sovereign immunity up to the limits of the Policy for purposes of arbitration and enforcement of any ensuing award or judgment in accordance with the tribal ordinance referenced in subparagraph (ii) below, in connection with any claim for bodily injury, property damage, or personal injury, or any

judgment resulting therefrom, arising out of, connected with, or relating to the operation of the Gaming Facility, including, but not limited to, injuries resulting from entry onto the Tribe's land for purposes of patronizing the Gaming Facility or providing goods or services to the Gaming Facility; provided, however, that nothing herein requires the Tribe to agree to liability for punitive damages or to waive its right to assert sovereign immunity in connection therewith. The Policy shall acknowledge that the Tribe has waived its right to assert sovereign immunity for the purpose of arbitration of those claims up to the limits of the Policy referred to above and for the purpose of enforcement of any ensuing award or judgment and shall include an endorsement providing that the insurer shall not invoke tribal sovereign immunity up to said limits of the Policy; however, such endorsement or acknowledgement shall not be deemed to waive or 18 otherwise limit the Tribe's sovereign immunity beyond the policy limits.

(ii) Prior to the effective date of this Amendment, the Tribe shall adopt, and at all times hereafter shall maintain in continuous force, an ordinance that provides for the following:

A. The ordinance shall provide that California tort law shall govern all claims of bodily injury, property damage, or personal injury arising out of, connected with, or relating to the operation of the Gaming Facility or the Gaming Activities, including, but not limited to, injuries resulting from entry onto the Tribe's land for purposes of patronizing the Gaming Facility or providing goods or services to the Gaming Facility, provided that California

law governing punitive damages need not be a part of the ordinance.

B. Said ordinance shall also expressly provide for waiver of the Tribe's right to assert sovereign immunity with respect to the arbitration of such claims but only up to the limits of the Policy; provided, however, such endorsement or acknowledgement shall not be deemed to waive or otherwise limit the Tribe's sovereign immunity beyond the policy limits. Said ordinance shall provide for the Tribe's consent to binding arbitration before a single arbitrator who shall be a retired judge in accordance with the comprehensive arbitration rules and procedures of JAMS (or if those rules no longer exist, the closest equivalent) to the extent of the limits of the Policy, that discovery in the arbitration proceedings shall be governed by Section 1283.05 of the California Code of Civil Procedure, that the Tribe shall initially bear the cost of JAMS and the arbitrator, but the arbitrator may award costs to the prevailing party not to exceed those allowable in a suit in California Superior Court, and that any party dissatisfied with the award of the arbitrator may at the party's election invoke the JAMS Optional Arbitration Appeal Procedure (or if those rules no longer exist, the closest equivalent), provided that the party making such election must

bear all costs and expenses of JAMS and the arbitrators associated with the Appeal Procedure regardless of the outcome. To effectuate its consent to the foregoing arbitration procedure, the Tribe shall, in the exercise of its sovereignty, waive its right to assert its sovereign immunity in connection with the arbitrator's jurisdiction and in any action to (1) enforce the parties' obligation to arbitrate, (2) confirm, correct, modify, or vacate the arbitral award rendered in the arbitration, or (3) enforce or execute a judgment based upon said award.

C. The ordinance may also require that the claimant' first exhaust the Tribe's administrative remedies for resolving the claim (hereinafter the "Tribal Dispute Process") in accordance the following standards:

> The claimant must bring his or her claim within 180 days, of receipt of written notice of the Tribal Dispute Process as long as notice thereof is served personally on the claimant or by certified mail with an executed return receipt by the claimant and the 180-day limitation period is prominently displayed on the front page of said notice. The ordinance may provide that any arbitration shall be stayed until the completion of the Tribal Dispute Process or 180 days from the date the claim is filed, whichever first occurs, unless the parties mutually agree to a longer period.

(iii) Upon notice that a claimant claims to have suffered an injury or damage covered by this Section, the Tribe shall provide notice by personal service or certified mail, return receipt requested, that the claimant is required 20 within the specified limitation period to first exhaust the Tribal Dispute Resolution Process, if any, and if dissatisfied with the resolution, entitled to arbitrate his or her claim.

(iv) Failure to comply with this Section 10.2, subdivision (d), shall be deemed a material breach of the Compact.

VII. MITIGATION OF OFF-RESERVATION IMPACTS

Section 10.8 is repealed and replaced by the following:

A. Section 10.8. Off-Reservation Impact(s).

Section 10.8.1. Tribal Environmental Impact Report. (a) Before the commencement of the Project as defined in Section 10.8.7 herein, the Tribe shall cause to be prepared a tribal environmental impact report, which is hereinafter referred to as a TEIR, analyzing the potentially significant off reservation environmental impacts of the Project pursuant to the process set forth in this Section 10.8; provided, however, that information or data which is relevant to such a TEIR and is a matter of public record or is generally available to the public need not be repeated in its entirety in such TEIR, but may be specifically cited as the source for conclusions stated therein; and provided further that such information or data shall be briefly described, that its relationship to the TEIR shall be indicated, and that the source thereof shall be reasonably available for inspection at a public place or public building. The TEIR shall provide detailed information about the Significant Effect(s) on the Off-Reservation Environment which the Project is likely to have, including each of the matters set forth in Exhibit A, shall list ways in which the Significant Effects on the Environment might be minimized, and shall include a detailed statement setting forth all of the following:

(i) All Significant Effects on the Environment of the proposed Project;

(ii) In a separate Section:

(A) Any Significant Effect on the Environment that cannot be avoided if the Project is implemented;

(B) Any Significant Effect on the Environment that would be irreversible if the Project is implemented;

(iii) Mitigation measures proposed to minimize Significant Effects on the Environment, including, but not limited to, measures to reduce the wasteful, inefficient, and unnecessary consumption of energy;

(iv) Alternatives to the Project; provided that the Tribe need not address alternatives that would cause it to forgo its right to engage in the Gaming Activities authorized by this Compact on its Indian lands;

(v) Whether any proposed mitigation would be feasible;

(vi) Any direct growth-inducing impacts of the Project; and

(vii) Whether the proposed mitigation would be effective to substantially reduce the potential Significant Effects on the Environment.

(b) In addition to the information required pursuant to subdivision (a), the TEIR shall also contain a statement briefly indicating the reasons for determining that various effects of the Project on the off-reservation environment are not significant and consequently have not been discussed in detail in the TEIR. In the TEIR, the direct and indirect Significant Effects on the Off-Reservation Environment, including each of the items on Exhibit A, shall be clearly identified and described, giving due consideration to both the short-term and long-term effects. The discussion of mitigation measures shall describe feasible measures which could minimize significant adverse effects, and shall distinguish between the measures that are proposed by the Tribe and other measures proposed by others. Where several measures are available to mitigate an effect, each should be discussed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures should not be deferred until some future time. The TEIR shall also describe a range of reasonable alternatives to the Project or to the location of the Project, which would feasibly attain most of the basic objectives of the Project and which would avoid or substantially lessen

any of the Significant Effects on the Environment, and evaluate the comparative merits of the alternatives; provided that the Tribe need not address alternatives that would cause it to forgo its right to engage in the Gaming Activities authorized by this Compact on its Indian lands. The TEIR must include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison. The TEIR shall also contain an index or table of contents and a summary, which shall identify each Significant Effect on the Environment with proposed measures and alternatives that would reduce or avoid that effect, and issues to be resolved, including the choice among alternatives and whether and how to mitigate the Significant Effects on the Environment. Previously approved land use documents, including, but not limited to, general plans, specific plans, and local coastal plans, may be used in cumulative impact analysis. The Tribe shall consider. any recommendations from the Board of Supervisors of the San Diego County ("County") concerning the person or entity to prepare the TEIR.

Section 10.8.2. Notice of Preparation of Draft TEIR.

(a) Upon commencing the preparation of the draft TEIR, the Tribe shall issue a Notice of Preparation to the State Clearinghouse in the State Office of Planning and Research ("State Clearinghouse") and to the County for distribution to the public. The Notice shall provide all Interested Persons with information describing the Project and its potential Significant Effects on the Environment sufficient to enable Interested Persons to make a meaningful response or comment. At a minimum, the Notice shall include all of the following information:

(i) A description of the Project;

(ii) The location of the Project shown on a detailed map, preferably topographical, and on a regional map; and

(iii) The probable off-reservation environmental effects of the Project.

(b) The Notice shall also inform Interested Persons of the preparation of the draft TEIR and shall inform them of the opportunity to provide comments to the Tribe within thirty (30) days of the date of the receipt of the Notice by the State Clearinghouse and the County. The Notice shall also request Interested Persons to identify in their comments the off reservation environmental issues and reasonable mitigation measures that the Tribe will need to have explored in the draft TEIR.

Section 10.8.3. Notice of Completion of the Draft TEIR.

(a) Within no less than thirty (30) days following the receipt of the Notice of Preparation by the State Clearinghouse and the County, the Tribe shall file a copy of the draft TEIR and a Notice of Completion with the State Clearinghouse, the County, and the California Department of Justice. The Notice of Completion shall include all of the following information:

(i) A brief description of the Project;

(ii) The proposed location of the Project;

(iii) An address where copies of the draft TEIR are available; and

(iv) Notice of a period of forty-five (45) days during which the Tribe may receive comments on the draft TEIR.

(b) The Tribe will submit forty-five (45) copies of the draft TEIR and Notice of Completion to the County, which will be asked to serve in a timely manner the Notice of Completion to all Interested Persons and asked to post public notice of the draft

TEIR at the office of the County Board of Supervisors and to furnish the public notice at the public libraries serving the County. In addition, the Tribe will provide public notice by at least one of the procedures specified below:

(i) Publication at least one time by the Tribe in a newspaper of general circulation in the area affected by the Project. If more than one area is affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas;

(ii) Posting of notice by the Tribe in the area adjacent to, but outside, the Indian lands on which the Project is to be located; or

(iii) Direct mailing by the Tribe to the owners and occupants of property adjacent to, but outside, the Indian lands on which the Project is to be located. Owners of such property shall be identified as shown on the latest equalization assessment roll.

Section 10.8.4. Issuance of Final TEIR. The Tribe shall prepare, certify and make available to the County at least fifty-five (55) days before the completion of negotiations pursuant to Section 10.8.8 a Final TEIR, which shall consist of:

(i) The draft TEIR or a revision of the draft;

(ii) Comments and recommendations received on the draft TEIR either verbatim or in summary;

(iii) A list of persons, organizations, and public agencies commenting on the draft TEIR;

(iv) The responses of the Tribe to significant environmental points raised in the review and consultation process; and

(v) Any other information added by the Tribe.

Section 10.8.5. The Tribe shall reimburse the County for copying and mailing costs resulting from making the Notice of Preparation, Notice of Completion, and Draft TEIR available to the public under this Section 10.8.

Section 10.8.6. The Tribe's failure to prepare a TEIR when required may warrant an injunction where appropriate.

Section 10.8.7. Definitions. For purposes of this Section 10.8, the following terms shall be defined as set forth in this subdivision.

(a) "Project" is defined as any activity occurring on Indian lands (after the effective date of this Amendment, a principal purpose of which is to serve the Tribe's Gaming Activities or Gaming Operation and which may cause either a direct physical change in the off-reservation environment, or a reasonably foreseeable indirect Physical change in the off-reservation environment. This definition shall be understood to include, but not be limited to, the construction or planned expansion of any Gaming Facility and any construction or planned expansion, a principal purpose of which is to serve a Gaming Facility, including, but not limited to, access roads, parking lots, a hotel, utility or waste disposal systems, or water supply, as long as such construction or expansion causes a direct or indirect physical change in the off-reservation environment.

(b) "Significant Effect(s) on the Environment" is the same as "Significant Effect(s) on the Off-Reservation Environment" and occur(s) if any of the following conditions exist:

(i) A proposed Project has the potential to degrade the quality of the off-reservation environment, curtail the range of the environment, or to achieve short-term, to the disadvantage of long-term, environmental goals.

(ii) The possible effects on the off-reservation environment of a Project are individually limited but cumulatively considerable. As used herein, "cumulatively considerable" means that the incremental effects of an individual Project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effect of probable future projects.

(iii) The off-reservation environmental effects of a Project will cause substantial adverse effects on human beings, either directly or indirectly.

For purposes of this definition, reservation refers to Indian lands within the meaning of IGRA or lands otherwise held for the Tribe in trust by the United States.

(c) "Interested Persons" means (i) all local, state, and federal agencies, which, if a Project were not taking place on Indian lands, would have responsibility for approving the project or would exercise authority over the natural resources that may be affected by the project, or (ii) persons, groups, or agencies that request in writing a notice of preparation of a draft TEIR or have commented on the Project in writing to the Tribe or the County.

Section 10.8.8. Intergovernmental Agreement. Before the commencement of a Project, and no later than the issuance of the Final TEIR to the County, the Tribe shall offer to commence negotiations with the County, and upon the County's acceptance of the Tribe's offer, shall negotiate with the County and shall enter into an enforceable written agreement with the County with respect to the matters set forth below:

(i) Provisions providing for the timely litigation of any Significant Effect on the Off-Reservation Environment (which effects may include, but are not limited to, aesthetics, agricultural resources, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, water resources, land use, mineral resources, traffic, noise, utilities and service systems, and cumulative effects), where such effect is attributable, in whole or in part, to the Project unless the parties agree that the particular mitigation is infeasible, taking into account economic, environmental, social, technological, or other considerations.

(ii) Provisions relating to compensation for law enforcement, fire protection, emergency medical services and any other public services to be provided by the County to the Tribe for the purposes of the Tribe's Gaming Operation as a consequence of the Project.

(iii) Provisions providing for reasonable compensation for programs designed to address gambling addiction.

(iv) Provisions providing for mitigation of any effect on public safety attributable to the Project, including any compensation to the County as a consequence thereof.

Section 10.8.9. Arbitration. In order to foster good governm[illegible]nt-to government relationships and to assure that the Tribe is not unreasonably prevented from commencing a Project and benefiting therefrom, if an agreement with the County is not entered within fifty-five (55) days of the submission of the Final TEIR, or such further time as the Tribe or the County (for purposes of this Section "the parties") may mutually agree in writing, any party may demand binding arbitration before a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association as set forth herein with respect to any remaining disputes arising from, connected with, or related to the negotiation. The arbitration shall be conducted as follows: Each party shall exchange with each other within five (5) days of the demand for arbitration its last, best written offer made during the negotiation pursuant to Section 10.8.8. The arbitrator shall schedule a hearing to be heard within thirty (30) days of his or her appointment. The arbitrator shall be limited to awarding only one or the other of the two offers submitted, without modification, based upon that proposal which best provides feasible mitigation of Significant Effects on the Off-Reservation Environment and on public services pursuant to Section 10.8.8, without unduly interfering with the principal objectives of the Project or imposing environmental mitigation measures which are different in nature or scale from the type of measures that have been required to mitigate impacts of a similar scale of other projects in the surrounding area, to the extent there are such other projects. The arbitrator shall take into consideration whether the final TEIR provides the data and information necessary to enable the County to determine both whether the Project may result in a Significant Effect

on the Off-Reservation Environment and whether the proposed measures in mitigation are sufficient to mitigate any such effect. If the respondent does not participate in the arbitration, the arbitrator shall nonetheless conduct the arbitration and issue an award, and the claimant shall submit such evidence as the arbitrator may require therefor. Review of the resulting arbitration award is waived. In order to effectuate this provision, and in the exercise of its sovereignty, the Tribe agrees to waive its right to assert sovereign immunity in connection with the arbitrator's jurisdiction or in any action to (i) enforce the other party's obligation to arbitrate, (ii) enforce or confirm any arbitral award rendered in the arbitration, or (iii) enforce or execute a judgment based upon said award.

VIII. LICENSURE OF FINANCIAL SOURCES

Section 6.4.6 is repealed and replaced by the following:

Section 6.4.6. Financial Sources.

(a) Subject to subdivision (e) of this Section 6.4.6, any person or entity extending financing, directly or indirectly, to a Tribe for a Gaming Facility or a Gaming Operation (a "Financial Source") shall be licensed by the Tribal Gaming Agency prior to extending that financing.

(b) A license issued under this Section shall be reviewed at least every two years for continuing compliance. In connection with such a review, the Tribal Gaming Agency shall require the Financial Source to update all information provided in the previous application. For purposes of Section 6.5.2, such a review shall be deemed to constitute an application for renewal.

(c) Any agreement between the Tribe and a Financial Source shall be deemed to include a provision for its termination without further liability

on the part of the Tribe, except for the bona fide repayment of all outstanding sums (exclusive of interest) owed as of the date of termination, upon revocation or non-renewal of the Financial Source's license by the Tribal Gaming Agency based on a determination of unsuitability by the State Gaming Agency. The Tribe shall not enter into, or continue to make payments pursuant to, any contract or agreement for the provision of financing with any person whose application to the State Gaming Agency for a determination of suitability has been denied or has expired without renewal.

(d) A Gaming Resource Supplier who provides financing exclusively in connection with the provision, sale or lease of Gaming Resources obtained from that Supplier may be licensed solely in accordance with licensing procedures applicable, if at all, to Gaming Resource Suppliers, and need not be separately licensed as a Financial Source under this section.

(e) (1) The Tribal Gaming Agency may, at its discretion, exclude from the licensing requirements of this section, the following Financial Sources under the circumstances stated.

(A) A federally-regulated or state-regulated bank, savings and loan association, or other federally- or state-regulated lending institution.

(B) An entity identified by Regulation CGCC-2, subdivision (f) (as in effect on July 1,2004) of the California Gambling Control Commission, when that entity is a Financial Source solely by reason of being (i) a purchaser or a holder of debt securities issued directly or indirectly by the Tribe for a Gaming Facility or by the Gaming Operation or (ii) the owner of a participation interest in any amount of indebtedness for which

a Financial Source described in subdivision (e)(1)(A) is the creditor.

(C) An investor who, alone or together with any person controlling, controlled by or under common control with such investor, holds less than 10% of all outstanding debt securities issued directly or indirectly by the Tribe for a Gaming Facility or by the Gaming Operation.

(D) An agency of the federal, state or local government providing financing, together with any person purchasing any debt securities of the agency to provide such financing.

(2) The following are not Financial Sources for purposes of this Section.

(A) An entity identified by Regulation CGCC-2, subdivision (h) (as in effect on July 1,2004) of the California Gambling Control Commission.

(B) A person or entity whose sole connection with a provision or extension of financing to the Tribe is to provide loan brokerage or debt servicing for a Financial Source at no cost to the Tribe or the Gaming Operation, provided that no portion of any financing provided is an extension of credit to the Tribe or the Gaming Operation by that person or entity.

(f) In recognition of changing financial circumstances, this Section shall be subject to good faith renegotiation by both parties in or after five (5) years from the effective date of this Amended Compact upon request of either party; provided such renegotiation shall not retroactively affect

transactions that have already taken place where the Financial Source has been excluded or exempted from licensing requirements.

IX. LABOR

Section 10.7 is hereby repealed and replaced by the following:

Section 10.7. Labor Relations. Within 30 days of the effective date of this amendment, the Tribe shall amend its Tribal Labor Relations Ordinance ("TLRO") to incorporate the provisions set forth in Exhibit C, and such amended ordinance shall remain in effect during the term of this Amended Compact.

X. AUTHORITY AND OPTION TO TERMINATE

A. A new Section 15.7 is hereby added as follows:

Section 15.7. The Tribe expressly represents that, as of the date of the Tribe's execution of this Amended Compact, the undersigned has the authority to execute) this Amendment on behalf of the Tribe, including any waivers of the right to immunity therein, and will provide written proof of such authority and of the ratification of this Amendment by the tribal governing body to the Governor no later than July 1,2004. In entering into this Amendment, the State expressly relies upon the foregoing representations by the Tribe and the State's entry into this Amendment is expressly made contingent upon the truth of those representations. If the Tribe fails to provide written proof of authority to execute this Amendment. , or written proof of ratification by the Tribe's governing body by July 1, 2004, the Governor may declare this Compact null and void by written notice filed with the California Secretary of State by July 15,2004.

B. A new Section 15.8 is hereby added as follows:

Section 15.8. If any initiative is adopted in California at the general election .in November 2004 that becomes effective and binding and that authorizes anyone other than an Indian tribe with a federally authorized compact to conduct the Gaming Activities specified in subdivisions (a) and (b) of Section 4.1 of this Amended Compact anywhere in this State, the Tribe shall have the right within ninety (90) days of the initiative taking effect and becoming binding to declare this Amendment null and void by written notice filed with the California Secretary of State.

XI. TERM

A. Section 11.1 is amended to read in its entirety as follows:

Section 11.1. Effective Date. This Amended Compact shall not be effective unless and until all of the following have occurred: (a) The amendment herein is ratified by statute in accordance with state law; and (b) Notice of approval or constructive approval is published in the Federal Register as provided in 25 U.S.C. Section 2710 (d)(3)(B).

B. Section 11.2.1 is repealed and replaced by the following:

Section 11.2.1. Term. Once effective, this Amended Compact shall be in full force and effective until December 31, 2030.

Subdivision (b) is repealed.

IN WITNESS WHEREOF, the undersigned sign this Amendment on behalf of the State of California and the Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation.

STATE OF CALIFORNIA

By Arnold Schwarzenegger
Governor of the State of California

Executed .this 21st day of June, 2004, at Sacramento, California

PAUMA BAND OF LUISENOF MISSION INDIANS OF THE PAUMA & YUIMA RESERVATION

By Chris Devers
Chairperson of the Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation

Executed this 21st day of June, 2004, at Sacramento, California

APPENDIX - M

APPENDIX M

AMENDMENT TO TRIBAL-STATE COMPACT BETWEEN THE STATE OF CALIFORNIA AND THE PECHANGA BAND OF LUISEÑO INDIANS

WHEREAS, the State of California (hereinafter "the State") and the Pechanga Band of Luiseño Indians of California (hereinafter "the Tribe") entered into a compact in 1999 (hereinafter the "1999 Compact"); and

WHEREAS, the Tribe has a history of working with Riverside County and local communities on land use, economic development, and other matters of mutual interest; and

WHEREAS, the State and the Tribe have agreed to revise the 1999 Compact to promote continued good relations between tribal, state, and local governments and to enhance tribal economic development and self-sufficiency; and

WHEREAS, the Tribe agrees to make a fair revenue contribution to the State, to enter into arrangements to mitigate to the extent practicable the off-reservation environmental and direct fiscal impacts of its Gaming Facility on local communities and local governments, and to offer additional consumer protections; and

WHEREAS, in recognition of the fair revenue contribution and the measures enhancing protections for local governments and the public and to provide a sound basis for the Tribe's decisions with respect to

investment in, and the operation of, its Gaming Activities, the State agrees to amend the 1999 Compact to afford the opportunity to operate additional Gaming Devices and to extend the term of the Compact; and

WHEREAS, the Tribe wishes to increase its commitment to share revenues with tribes in California that receive monies from the Revenue Sharing Trust Fund; and

WHEREAS, the State and the Tribe have concluded that this amendment to the 1999 Compact provides for a fair contribution to the State from the Tribe's Gaming Operation, enhances the Tribe's exclusive right to operate slot machines, protects the interests of the Tribe and the California public, and will promote and secure long-term stability, mutual respect, and mutual benefits; and

WHEREAS, the State and the Tribe recognize that this amendment is authorized and negotiated and shall take effect pursuant to the Indian Gaming Regulatory Act ("IGRA"); and

WHEREAS, the State and the Tribe agree that all terms of this amendment to the 1999 Compact (collectively the "Amended Compact") are intended to be binding and enforceable.

NOW, THEREFORE, the Tribe and the State hereby amend the 1999 Compact as follows:

I. AUTHORIZED FACILITIES

Section 4.2 is repealed and replaced by the following:

Section 4.2. *Authorized Gaming Facilities.* The Tribe may establish and operate not more than two (2) Gaming Facilities within the boundaries of its Reservation and only on the Tribe's Indian lands existing as of the execution date of this Amended Compact. The Gaming Facilities shall be located at (1)

45000 Pechanga Parkway, Temecula, California 92592; and (2) one additional location on the Tribe's Indian lands. The Tribe may operate in each Gaming Facility any forms and kinds of gaming permitted by law, but only to the extent allowed under IGRA, this Amended Compact, and the Tribe's Gaming Ordinance.

II. REVENUE CONTRIBUTION

A. **Sections 2.15, 4.3.2.3, 5.0, 5.1, 5.2, and 5.3** are repealed.

B. **Section 4.3.1** is repealed and replaced by the following:

Section 4.3.1.

(a) The Tribe is entitled to operate no more than seven thousand five hundred (7,500) Gaming Devices, as set forth below, but its right to operate any Gaming Devices shall be conditioned upon its making the payments set forth under subdivision (h) in accordance with the terms set forth in subdivision (c). The number of Gaming Devices that may be operated is:

(i) 1,333, which were operated on September 1, 1999; and

(ii) 667, operated pursuant to licenses previously issued in accordance with former Section 4.3.2.2 of the 1999 Compact, which licenses shall be maintained during the term of this Amended Compact pursuant to Section 4.3.2.2 herein; and

(iii) up to 5,500 additional Gaming Devices.

(b) The Tribe agrees that in consideration of the exclusive right to operate Gaming Devices within the geographic region specified in Section 3.2 of this

Amended Compact and to operate additional Gaming Devices outside the licensing system established by the 1999 Compact, and other valuable consideration, the Tribe shall pay to the State the following:

(i) an annual payment of forty-two million, five hundred thousand dollars ($42,500,000.00); and

(ii) an annual payment for the operation of the additional Gaming Devices identified in subdivision (a)(iii) of: (1) fifteen percent (15%) of the Net Win generated from the operation of up to three thousand (3,000) additional Gaming Devices over the existing two thousand (2,000) Gaming Devices specified in subdivisions (a)(i) and (a)(ii); plus (2) twenty-five percent (25%) of the Net Win generated from the operation of up to an additional two thousand five hundred (2,500) Gaming Devices.

The payments specified in this subdivision (b) have been negotiated between the parties as a reasonable contribution to be made annually in quarterly payments based upon the Tribe's market conditions, its circumstances, and the rights afforded by this Amendment.

(c) The Tribe shall remit the annual payments referenced in subdivision (b) to such agency, trust, fund or entity, as the State Director of Finance, pursuant to law, from time to time, shall specify to the Tribe in writing, in quarterly payments. The quarterly 3 payments shall be due on the thirtieth (30th) day following the end of each calendar quarter (i.e., by April 30 for the first quarter, July 30 for the second quarter, October 30 for the third quarter, and January 30 for the fourth quarter). The payments in subdivision (b)(ii) shall be determined in accordance with subdivision (d) below and shall be based on the Net Win generated during the immediately preceding quarter. If the Gaming Activities authorized by this

Amended Compact commence during a calendar quarter, the first payment shall be due on the thirtieth (30th) day following the end of the first full quarter of the Gaming Operation and shall cover the period from the commencement of the Gaming Activities to the end of the first full calendar quarter. The quarterly payments shall be accompanied by the certification specified in subdivision (g).

(d) (i) For purposes of subdivision (b)(ii), the Net Win generated from the operation of all additional Gaming Devices over the existing 2,000 Gaming Devices shall be calculated by multiplying the average Net Win per Gaming Device for the quarter by the average number of Gaming Devices operated during that quarter in excess of 2,000.

(ii) The average Net Win per Gaming Device is the total Net Win for the quarter divided by the average number of Gaming Devices present on the floors of the Tribe's Gaming Facilities during that quarter.

(iii) In turn, the average number of Gaming Devices for the quarter shall be determined by aggregating each day's total number of Gaming Devices present on the floors of the Tribe's Gaming Facilities for each day that the Gaming Facilities are open to the public during that quarter and dividing that total by the number of days in the quarter that the Gaming Facilities are open.

(e) "Net Win" means the gross revenue from Class III Gaming Devices ("drop") less all prizes and payouts that are directly related to the amount wagered, fills, hopper adjustments, and "participation fees" as defined herein. "Participation fees" is defined as payments made to Gaming Resource Suppliers on a periodic basis by the Tribe's Gaming Operation for the right to lease or otherwise license for play Class III Gaming Devices that the Tribe does not own and that are not generally available for outright purchase by gaming operators.

(f) "Gaming Device," as defined in Section 2.6 of the Amended Compact, includes, but is not limited to, video poker, but does not include electronic, computer, or other technological aids that qualify as class II gaming (as defined under IGRA). For purposes of calculating the number of Gaming Devices, each player station, terminal or other device on which a game is played constitutes a separate Gaming Device, irrespective of whether it is part of an interconnected system of such terminals, stations or devices. For purposes of Sections 3.2(b)(ii), 4.3.1(b)(ii), 4.3.1(d), 4.3.1(e), and 4.3.1(f) of this Amended compact, if a Gaming Device is taken out of play during a day for repairs or otherwise, and is replaced by another Gaming Device for all or a portion of the remainder of that day, those two (2) Gaming Devices shall be deemed one (1) Gaming Device for that day.

(g) The quarterly payments made pursuant to subdivision (c) shall be accompanied by a certification of the Net Win calculation prepared by the chief financial officer of the Gaming Operation or other duly authorized representative of the Tribe. The State Gaming Agency may audit the Net Win calculation and, if it determines that the Net Win is understated, will promptly notify the Tribe and provide a copy of the audit. The Tribe, within thirty (30) calendar days, will either accept the difference or provide a reconciliation satisfactory to the State Gaming Agency. If the Tribe either accepts the difference or does not provide a reconciliation satisfactory to the State Gaming Agency, the Tribe must immediately pay the amount of the resulting deficiency plus accrued interest thereon at the rate of one percent (1.0%) per month or the maximum rate permitted by state law for delinquent payments owed to the State, whichever is less. If the Tribe does not provide a reconciliation satisfactory to the State Gaming Agency, the Tribe, once payment is made, may commence dispute resolution under Amended Compact Section 9.0. The parties hereto expressly acknowledge that the certifications and information related to payments herein are subject to the confidentiality protections and assurances of

subdivision (c) of Amended Compact Section 7.4.3.

(h) Notwithstanding anything to the contrary in Amended Compact Section 9.0, any failure of the Tribe to remit its payments pursuant to subdivisions (b), (c), (d), (e), (f), or (g) will entitle the State to immediately seek injunctive relief in federal court, or, if the federal court declines to hear the action, in any state court of competent jurisdiction, to compel the payments, plus accrued interest thereon at the rate of one percent (1.0%) per month or the maximum rate permitted by state law for delinquent payments owed to the State, whichever is less; and further, the Tribe hereby expressly consents to be sued in either court, including any related courts of appeal, and waives its right to assert sovereign immunity against the State in any such proceeding to enforce the payment obligations. Failure to make timely payment shall be deemed a material breach of this Amended Compact.

(i) If any portion of the fee payments under subdivision (b) herein is overdue after the State Gaming Agency has provided written notice to the Tribe of the overdue amount with an opportunity to cure of at least fifteen (15) business days, and if more than sixty (60) calendar days have passed from the due date, then the Tribe shall cease operating all of its Gaming Devices until full payment is made.

(j) Notwithstanding the repeal of Sections 5.0, 5.1, 5.2, and 5.3 of the 1999 Compact, nothing herein shall be construed to: (1) discharge any contribution obligations of the Tribe under Sections 5.1 and 5.3 of the 1999 Compact based on the Tribe's gaming revenue received prior to the effective date of this Amended Compact; or (2) preclude the State from conducting audits pursuant to Section 5.3 of the 1999 Compact for any contributions made by the Tribe to the Special Distribution Fund pursuant to the 1999 Compact.

(k) This Section constitutes a "Section 4.3.1." within the meaning of article 6.5 (commencing with section 63048.6) of Chapter 2 of Division 1 of Title 6.7

of the California Government Code.

(l) If it is determined that there is an insufficient amount in the Indian Gaming Revenue Sharing Trust Fund in a fiscal year to distribute the quarterly payments pursuant to Government Code Section 12012.90 to each eligible recipient Indian tribe, then the State Gaming Agency shall direct a portion of the revenue contribution in Section 4.3.1 (b)(i) to increase the revenue contribution to the Indian Gaming Revenue Sharing Trust Fund in Section 4.3.2.2 in an amount sufficient to ensure the Indian Gaming Revenue Sharing Trust Fund has sufficient resources for each eligible recipient Indian tribe to receive quarterly payments pursuant to Government Code Section 12012.90.

C. **Section 4.3.2.2** is repealed and replaced by the following:

Section 4.3.2.2. The Tribe shall maintain its existing licenses to operate Gaming Devices by paying to the State Gaming Agency for deposit into the Revenue Sharing Trust Fund an annual fee of two million dollars ($2,000,000.00), to be paid in quarterly payments of five hundred thousand dollars ($500,000.00) each within thirty (30) days of the end of each calendar quarter. If this Amendment becomes effective during a calendar quarter, payment shall be prorated for the number of days remaining in that quarter.

D. A new **Section 4.3.4** is added as follows:

Section 4.3.4. For purposes of Sections 4.3.1 and 4.3.2.2 of this Amended Compact, the State Gaming Agency shall be the California Gambling Control Commission, unless the State provides otherwise by written notice pursuant to Section 13.0.

III. AUTHORIZATION AND EXCLUSIVITY

A. **Section 12.4** is repealed.

B. **Section 3.0** is repealed and replaced with the following:

Section 3.0. Authorization and Exclusivity of Class III Gaming.

C. A new **Section 3.1** is added as follows:

Section 3.1. The Tribe is hereby authorized and permitted to engage in only the Gaming Activities expressly referred to in Section 4.1 and shall not engage in Class **III** gaming that is not expressly authorized in that Section.

D. A new **Section 3.2** is added as follows

Section 3.2.

(a) (i) In the event the State authorizes any person or entity other than an Indian tribe with a federally approved Class III gaming compact to engage in the Gaming Activities specified in subdivision (a) of Section 4.1 of this Amended Compact within the Tribe's core geographic market, which for purposes of this subdivision (a)(i) consists of that geographic area that is within Riverside, Orange, Los Angeles, and San Diego Counties, and such person or entity engages in the Gaming Activities specified in subdivision (a) of Section 4.1 of this Amended Compact within the Tribe's core geographic market as specified in this subdivision (a)(i), the Tribe shall have the right to: (A) terminate this Amended Compact, in which case the Tribe will lose the right to engage in Gaming Activities, or (B) continue under this Amended Compact, in which case the Tribe shall be relieved of its obligations to make payments to the State specified in Sections 4.3.1, subdivision (b) and 4.3.2.2, except as set forth in subdivision (b) below, until such time that the Gaming Activities by such person or entity within the Tribe's core geographic market cease.

(ii) In the event the State authorizes any

person or entity other than an Indian tribe with a federally approved Class III gaming compact to engage in the Gaming Activities specified in subdivision (b) of Section 4.1 of this Amended Compact within the Tribe's core geographic market, which for purposes of this subdivision (a)(ii) consists of that geographic area that is within a 100-mile radius of the Tribe's Gaming Facility, and such person or entity engages in the Gaming Activities specified in subdivision (b) of Section 4.1 of this Amended Compact, with twenty-five (25) or more tables at which any kind of card game is played, at anyone location within the Tribe's core geographic market as specified in this subdivision (a)(ii), the Tribe shall have the right to: (A) terminate this Amended Compact, in which case the Tribe will lose the right to engage in Gaming Activities, or (B) continue under this Amended Compact, in which case the Tribe shall be relieved of its obligations to make payments to the State specified in Sections 4.3.1, subdivision (b) and 4.3.2.2, except as set forth in subdivision (b) below, until such time that the Gaming Activities by such person or entity within the Tribe's core geographic market cease.

(b) (i) Notwithstanding the Tribe's cessation of payments under subdivision (a), if the Tribe operates no more than 2,000 Gaming Devices throughout any calendar year, it shall nonetheless compensate the State for the actual and reasonable costs of regulation, as . determined by the State Director of Finance, or failing agreement on that amount, as determined by arbitration pursuant to Section 9.2 of this Amended Compact.

(ii) Notwithstanding the Tribe's cessation of payments under subdivision (a), if the Tribe operates more than 2,000 Gaming Devices, it shall nonetheless pay twelve and one-half percent (12.5%) of the Net Win attributable to all Gaming Devices above 2,000 in quarterly payments in accordance with subdivisions (c), (d), (e), *(t),* and (g) of Section 4.3.1, but in no event shall the Tribe pay less than the actual and reasonable costs of regulation, as determined in subdivision (b)(i), if that amount is greater.

(iii) For purposes of subdivision (b)(ii), the Net Win generated from the operation of all additional Gaming Devices over the existing 2,000 Gaming Devices shall be calculated by multiplying the average Net Win per Gaming Device for the quarter by the average number of Gaming Devices operated during that quarter in excess of 2,000. The average Net Win per Gaming Device is the total Net Win for the quarter divided by the average number of Gaming Devices present on the floors of the Tribe's Gaming Facilities during that quarter. In turn, the average number of Gaming Devices for the quarter shall be determined by aggregating each day's total number of Gaming Devices present on the floors of the Tribe's Gaming Facilities for each day that the Gaming Facilities are open to the public during that quarter and dividing that total by the number of days in the quarter that the Gaming Facilities are open.

(c) Nothing herein shall relieve the Tribe of any obligations' it may have pursuant to any intergovernmental agreement entered into pursuant to Sections 10.8.8 or 10.8.9.

(d) Nothing herein precludes the State Lottery from offering any lottery games or devices that are authorized by the California Constitution as it exists as of July 1, 2006.

IV. TESTING OF GAMING DEVICES

A. The following new Section 7.5 is added as follows:

Section 7.5. Testing of Gaming Devices.

(a) No Gaming Device may be offered for play unless:

(i) The manufacturer or distributor which sells, leases, or distributes such Gaming Device (A) has

applied for a determination of suitability by the State Gaming Agency at least fifteen (15) days before it is offered for play, (B) has not been found to be unsuitable by the State Gaming Agency, and (C) has been licensed by the Tribal Gaming Agency; and

(ii) The software for the game authorized for play on the Gaming Device has been tested, approved and certified by an independent or state governmental gaming test laboratory (the "Gaming Test Laboratory") as operating in accordance with either the standards of Gaming Laboratories International, Inc. known ,as GLI-11 and GLI-12, or the technical standards approved by the State of Nevada, or such other technical standards as the State Gaming Agency and the Tribal Gaming Agency shall agree upon, which agreement shall not be unreasonably withheld, and a copy of the certification is provided to the State Gaming Agency by electronic transmission or by mail unless the State Gaming Agency waives in writing receipt of copies of certification; and

(iii) The software for the game authorized for play on the Gaming Device is tested by the Tribal Gaming Agency to ensure that each game authorized for play on the Gaming Device has the correct electronic signature prior to insertion into the Gaming Device; and

(iv) The hardware and associated equipment for each type of Gaming Device has been tested by the Gaming Test Laboratory to ensure operation in accordance with the manufacturer's specifications.

(v) The hardware and associated equipment for each Gaming Device has been tested by the Tribal Gaming Agency to ensure operation in accordance with the manufacturer's specifications.

(b) The Gaming Test Laboratory shall be an independent or state governmental gaming test laboratory recognized in the gaming industry which (i) is competent and qualified to conduct scientific tests and evaluations of Gaming Devices, and (ii) is licensed or approved by any of the following states: Arizona, California, Colorado, Illinois, Indiana, Iowa, Michigan, Missouri, Nevada, New Jersey, or Wisconsin. The Tribal Gaming Agency shall submit to the State Gaming Agency documentation that demonstrates the Gaming Test Laboratory satisfies (i) and (ii) herein within thirty (30) days of the effective date of this Amended Compact, or if such use follows the effective date, within fifteen (15) days prior to reliance thereon. If, at any time, the Gaming Test Laboratory license and/or approval required by (ii) herein is suspended or revoked by any of those states or the Gaming Test Laboratory is found unsuitable by the State Gaming Agency, then the State Gaming Agency may reject the use of the Gaming Test Laboratory, and upon such rejection, the Tribal Gaming Agency shall ensure that the Gaming Test Laboratory discontinues its responsibilities under this Section.

(c) The State Gaming Agency may inspect the Gaming Devices in operation at a Gaming Facility on a random basis four (4) times annually to confirm that they operate and play properly pursuant to the

manufacturer's technical standards. During each random inspection, the State Gaming Agency shall inspect no more than five percent (5%) of the Gaming Devices in operation at the Gaming Facility and shall not remove a Gaming Device from service, except during inspection or testing, or from the Gaming Facility at any time, unless it obtains the concurrence of the Tribal Gaming Agency, which shall not be unreasonably withheld. The random inspections conducted pursuant to this subdivision shall occur during normal business hours from 7 a.m. to 5 p.m. outside of Fridays, weekends, and holidays. The State Gaming Agency shall provide notice to the Tribal Gaming Agency of such inspection prior to the commencement of the random inspection, and the Tribal Gaming Agency may accompany the State Gaming Agency inspector(s) during the inspection of the Gaming Devices. The State Gaming Agency may conduct additional inspections only upon reasonable belief of any irregularity and after informing the Tribal Gaming Agency of the basis for such belief.

(d) The State Gaming Agency may review at a Gaming Facility during normal business hours the Tribe's technical standards, regulations and internal controls applicable to the Tribe's Gaming Devices. The Tribal Gaming Agency shall notify the State Gaming Agency of, and make available for review by the State Gaming Agency, any revisions to the Tribe's technical standards, manuals, regulations and/or internal controls for the Tribe's Gaming Devices. The notice shall be made at least thirty (30) days before the effective date of such revisions. .Upon request by the State Gaming Agency, the Tribal Gaming Agency shall provide copies of specified portions of the technical standards, manuals, regulations and internal controls to the State Gaming Agency.

(e) For purposes of this Section 7.5, the State Gaming Agency shall be the California Gambling Control Commission, unless the State provides otherwise by written notice pursuant to Section 13.0.

V. BUILDING CODES

Subdivision (d) of Section 6.4.2 is repealed and subdivisions (d)-(l) of Section 6.4.2 are added as follows:

Section 6.4.2.

(d) Subdivision (b) shall apply to any Gaming Facility constructed prior to the effective date of this Amendment, and subdivisions (e) through (1) herein shall apply to the construction of any new Gaming Facility after the effective date of this Amendment and to any reconstruction, alteration of, or addition to, any Gaming Facility occurring after the effective date ("Covered Gaming Facility Construction").

(e) In order to ensure the protection of the health and safety of all Gaming Facility patrons, guests, and employees, the Tribe shall adopt or has already adopted, and shall maintain throughout the term of this Amended Compact, an ordinance that requires any Covered Gaming Facility Construction to meet or exceed the California Building Code and the Public 12 Safety Code applicable to the city or county in which the Gaming Facility is located as set forth in Titles 19 and 24 of the California Code of Regulations, as those regulations may be amended during the term of this Amended Compact, including but not limited to, codes for building, electrical, energy, mechanical, plumbing, fire, and safety ("the Applicable Codes"). Any Covered Gaming Facility Construction will also comply with the federal Americans with Disabilities Act, P.L. 101-336, as amended, 42 U.S.C. § 12101 et seq. Notwithstanding the foregoing, the Tribe need not comply with any standard that specifically applies in name or in fact only to tribal facilities. Without limiting the rights of the State under this Section, reference to Applicable Codes is not intended to confer jurisdiction upon the State or its political subdivisions.

(f) In order to assure compliance with the Applicable Codes, in all cases where the Applicable Codes would otherwise require a permit, the Tribe shall require inspections and shall, for that purpose, employ for any Covered Gaming Facility Construction appropriate plan checkers or review firms that either are California licensed architects or engineers with relevant experience or are on the list, if any, of approved plan checkers or review firms provided by the city or county in which the Gaming Facility is located, and employ project inspectors that have been either certified in compliance with California Health and Safety Code sections 18949.25-18949.31 or approved as Class 1 certified inspectors by the Division of the State Architect or approved as Class A certified inspectors by the Office of Statewide Health Planning and Development or their successors. For purposes of this subdivision, the local agency referenced in California Health and Safety Code sections 18949.25-18949.31 shall be the Tribe. The Tribe shall require the inspectors to maintain contemporaneous records of all inspections and report in writing any failure to comply with the Applicable Codes to the Tribal Gaming Agency and an agency designated by the State (the "State Designated Agency"). The plan checkers, review firms, and project inspectors shall hereafter be referred to as "Inspector(s).

(g) In all cases where the Applicable Codes would otherwise require plan check, the Tribe shall require those responsible for any Covered Gaming Facility Construction to maintain for inspection and copying by the State Designated Agency upon its request the documentation set forth below:

(i) The design and construction calculations, and plans and specifications that form the basis for the planned Covered Gaming Facility Construction (the "Design and Building Plans");

(ii) All contract change orders, and

other documents that are related to any material changes to a structural detail of the Design and Building Plans or any other changes in the Design and Building Plans; and

(iii) All other contract change orders.

The Tribe shall maintain the Design and Building Plans for the term of this Amended Compact or until expiration of twenty four (24) months following permanent cessation of occupancy of the building to which such plans and other documents apply, whichever first occurs.

(h) The State Designated Agency may designate an agent or agents to be given reasonable advance notice of each inspection required under subdivision (f), and the State agent(s) may accompany the Inspector on any such inspection. The Tribe agrees to correct any Gaming Facility condition noted in the inspection that does not meet the Applicable Codes (hereinafter "deficiency"). Upon not fewer than three (3) business days' notice to the Tribal Gaming Agency, except in circumstances posing a serious or significant risk to the health or safety of any persons, in which case no advance notice is required, the State Designated Agency shall also have the right to conduct an independent inspection of the Gaming Facility to verify compliance with the Applicable Codes before public occupancy and shall report to the Tribal Gaming Agency any alleged deficiency; provided, however, that prior to any exercise by the State of its right to inspect without notice based upon alleged circumstances posing a serious or significant threat to the health or safety of any person, the State Designated Agency shall provide to the Tribal Gaming Agency notice in writing specifying in reasonable detail those alleged circumstances.

(i) Upon final certification by the Inspector that a Gaming Facility meets Applicable Codes, the Tribal Gaming Agency shall forward the Inspector's

certification to the State Designated Agency within ten (10) days of issuance. If the State Designated Agency objects to that certification, the Tribe shall make a good faith effort to address the State Designated Agency's concerns, but if the State Designated Agency does not withdraw its objection, the matter will be resolved in accordance with the dispute resolution provisions of Section 9.0.

(j) A Gaming Facility shall be issued a certificate of occupancy by the Tribal Gaming Agency based on the final certification specified in subdivision (i). The certificate of occupancy shall be reviewed for continuing compliance on a biennial basis. Inspections by Inspectors (as defined herein) shall be conducted under the direction of the Tribal Gaming Agency as the basis for issuing any biennial renewals of the certificate of occupancy.

(k) Any failure to remedy within a reasonable period of time any deficiency that poses a serious or significant risk to the health or safety of any person shall be deemed a violation of this Amended Compact and furthermore shall be grounds for the State Designated Agency to seek and obtain a court order to prohibit occupancy of the affected portion of the Gaming Facility until the deficiency is corrected.

(l) The Tribe shall also take all necessary steps to (i) reasonably ensure the ongoing availability of sufficient and qualified fire suppression services to the Gaming Facility and (ii) reasonably ensure that the Gaming Facility satisfies all requirements of the Tribe's fire codes and the fire codes and regulations applicable to the county and any city in which the Gaming Facility is located. Not more than sixty (60) days after the effective date of this Amendment and not less than thirty (30) days before the commencement of Gaming Activities in any Gaming Facility subject to the Covered Gaming Facility Construction requirements of this Section, and not less than biennially thereafter in both cases, and upon at least ten (10) days' notice to the State Designated

Agency, the Gaming Facility shall be inspected, at the Tribe's expense, by a Tribal official, if any, who is responsible for fire protection on the Tribe's lands, or by an independent expert, for purposes of certifying that the Gaming Facility meets a reasonable standard of fire safety and life safety. The State Designated Agency shall be entitled to designate and have a qualified representative or representatives present during the inspection. During such inspection, the State's representative(s) shall specify to the Tribal official or independent expert, as the case may be, any condition which the representative(s) reasonably believes would preclude certification of the Gaming Facility as meeting a reasonable standard of fire safety and life safety. Within fifteen (15) days of the inspection, the Tribal official or independent expert shall issue a report on the inspection, identifying any deficiency in fire safety or life safety at the Gaming Facility or in the ability of the Tribe to meet reasonably expected fire suppression needs of the Gaming Facility. Within fifteen (15) days after the issuance of the report, the Tribal official or independent expert shall also require and approve a specific plan for correcting deficiencies, whether in fire safety at the Gaming Facility or in the Tribe's ability to meet the reasonably expected fire suppression needs of the Gaming Facility, including those identified by the State's representative(s). A copy of the report shall be served on the State Designated Agency, upon delivery of the report to the Tribe. Immediately upon correction of all deficiencies identified in the report, the Tribal official or independent expert shall certify in writing to the State Designated Agency that all previously identified deficiencies have been corrected. Any failure to correct all deficiencies identified in the report within a reasonable period of time may be deemed by the State to be a violation of the Amended Compact, and any failure to promptly correct those deficiencies that pose a serious or significant risk to the health or safety of any occupants shall be a violation of the Compact and grounds for the State Gaming Agency or other State Designated Agency to prohibit occupancy of the affected portion of the Gaming Facility pursuant to a

court order until the deficiency is corrected.

VI. PATRON DISPUTES

Section 8.1.10(d) of the 1999 Compact is repealed and replaced by the following:

Section 8.1.10(d)

(i) The Tribal Gaming Agency shall promulgate regulations governing patron disputes over the play and the operation of any Gaming Activity, including any refusal to pay a patron any

alleged winnings from any Gaming Activities, which regulations must meet the following minimum standards:

(A) A patron who makes a complaint to personnel of the Gaming Operation over the play or operation of any game within three (3) days of the play or operation shall be advised in writing of his or her right to request, within fifteen (15) days of the date of making the complaint, resolution of the complaint by the Tribal Gaming Agency, and if dissatisfied with that resolution, to timely proceed to a resolution by binding arbitration.

(B) Upon request by the patron for a resolution of his or her complaint, the Tribal Gaming Agency shall conduct a complete investigation, shall provide to the patron a copy of its regulations concerning patron complaints, and shall render a decision consistent with federal gaming standards. The decision shall be issued within sixty (60) days of the patron's request, shall be in writing, shall be based on the facts surrounding

the dispute, and shall set forth the reasons for the decision.

(C) If the patron is dissatisfied with the decision of the Tribal Gaming Agency, or no decision is issued within the sixty (60) day period, the patron may request that the complaint over claimed prizes or winnings and the amount thereof, be settled by binding arbitration before a single arbitrator, who shall be a retired judge, in accordance with the streamlined arbitration rules and procedures of JAMS (or if those rules no longer exist, the closest equivalent). The arbitration shall take place within twenty-five (25) miles of the exterior boundaries of the Pechanga Indian Reservation (the "Reservation"). Upon such request, the Tribe shall consent to such arbitration and agree to abide by the decision of the arbitrator; provided, however, that if any alleged winnings are found to be a result of a mechanical, electronic or electromechanical failure, which is not due to the intentional acts or gross negligence of the Tribe or its agents, the arbitrator shall deny the patron's claim for the winnings but shall award reimbursement of the amounts wagered by the patron which were lost as a result of the failure, unless the arbitrator finds that such failure was the result of the intentional act or gross negligence of the patron. To effectuate its consent to arbitration, the Tribe shall, in the exercise of its sovereignty, waive its right to assert sovereign immunity in connection with the arbitrator's jurisdiction and in any action brought in federal court or, if the federal court declines to hear the action, in any action brought in the courts of the State of California that are located in Riverside

County, including courts of appeal, to (1) enforce the parties' obligation to arbitrate, (2) confirm, correct, modify, or vacate the arbitral award rendered in the arbitration, or (3) enforce or execute a judgment based upon the award. The Tribe agrees not to assert, and will waive any defense, alleging improper venue or forum non conveniens as to such state courts. The cost and expenses of such arbitration shall be initially borne by the Tribe but the arbitrator shall award to the , prevailing party its costs and expenses (but not attorney fees). Any party dissatisfied with the award of the arbitrator may at the party's election invoke the JAMS Optional Arbitration Appeal Procedure (and if those rules no longer exist, the closest equivalent); provided that the party making such election must bear all costs and expenses of JAMS and the arbitrators associated with the Appeal Procedure regardless of the outcome.

(ii) At such time that the Tribe establishes a tribal court system, the Tribe may give notice to the State that it seeks to renegotiate in good faith this subdivision (d), in which case, the State shall be obligated to negotiate in good faith the arrangements, if any, by which the tribal court system will adjudicate patron claims covered under this subdivision. In so negotiating, the State shall give due respect to the sovereign rights of the Tribe, and due consideration to the due process safeguards established in the tribal court system, the transparency of the tribal court system, and the appellate rights afforded under the system.

VII. PUBLIC AND WORKPLACE HEALTH, SAFETY, AND LIABILITY

A. Sections 10.2 (a), (b), and (c) of the 1999

Compact are repealed and replaced by the following:

(a) Adopt and comply with standards no less stringent than state public health standards for food and beverage handling. The Gaming Operation will allow inspection of food and beverage services by state or county health inspectors, during normal hours of operation of the Gaming Facility, to assess compliance with these standards, unless inspections are routinely made by an agency of the United States government to ensure compliance with equivalent standards of the United States Public Health Service. Any report or writing by any inspector shall be transmitted to the State Gaming Agency and the Tribal Gaming Agency within twenty-four (24) hours of its issuance to the Gaming Operation. Nothing herein shall be construed as a submission of the Tribe to the jurisdiction of those state or county health inspectors, but any alleged violations of the standards shall be treated as alleged violations of this Amended Compact.

(b) Adopt and comply with standards no less stringent than federal water quality and safe drinking water standards applicable in California; the Gaming Operation will allow for inspection and testing of Gaming Facility water quality by state or county health inspectors, as applicable, during normal hours of operation of the Gaming Facility, to assess compliance with these standards, unless inspections and testing are routinely made by an agency of the United States pursuant to, or by the Tribe under express authorization of federal law, to ensure compliance with federal water quality and safe drinking water standards. Any report or writing by any inspector shall be transmitted to the State Gaming Agency and the Tribal Gaming Agency within twenty-four (24) hours of its issuance to the Gaming Operation. Nothing herein shall be construed as submission of the Tribe to the jurisdiction of

those state or county health inspectors, but any alleged violations of the standards shall be treated as alleged violations of this Amended Compact.

(c) Comply with the building and safety standards set forth in Section 6.4, as amended herein.

B. A new **Section 10.2(1)** is added as follows:

(1) Adopt and comply with standards no less stringent than the standards of the Fair Labor Standards Act, 29 U.S.C. § 201, et seq., and the United States Department of Labor regulations

implementing the Fair Labor Standards Act (29 CFR § 500, et seq.).

C. **Section 10.2(d)** of the 1999 Compact is repealed and replaced by the following:

Section 10.2(d)

(i) The Tribe shall obtain and maintain a commercial general liability insurance policy consistent with industry standards for non-tribal casinos and underwritten by an insurer with an A.M. Best rating of A or higher ("Policy") which provides coverage of no less than ten million dollars ($10,000,000.00) per occurrence for bodily injury, property damage, and personal injury arising out of, connected with, or relating to the operation of the Gaming Facility or Gaming Activities. In order to effectuate the insurance coverage, the Tribe shall waive its right to assert sovereign immunity up to the limits of the Policy in accordance with the tribal ordinance referenced in subdivision (d)(ii) below in connection with any claim for bodily injury, property damage, or personal injury arising out of, connected with, or relating to the operation of the Gaming Facility, including, but not limited to, injuries

resulting from entry onto the Tribe's land for purposes of patronizing the Gaming Facility or providing goods or services to the Gaming Facility; provided, however, that nothing herein requires the Tribe to agree to liability for punitive damages or to waive its right to assert sovereign immunity in connection therewith. The Policy shall acknowledge that the Tribe has waived its right to assert sovereign immunity for the purpose of arbitration of those claims up to the limits of the Policy referred to above and for the purpose of enforcement of any ensuing award or judgment and shall include an endorsement providing that the insurer shall not invoke tribal sovereign immunity up to the limits of the Policy; however, such endorsement or acknowledgement shall not be deemed to waive or otherwise limit the Tribe's sovereign immunity beyond the Policy limits.

(ii) The Tribe shall maintain in continuous force its Tort Liability Ordinance which shall, prior to the effective date of this Amendment and at all times hereafter, continuously provide at least the following:

(A) That California tort law shall govern all claims of bodily injury, property damage, or personal injury arising out of, connected with, or relating to the operation of the Gaming Facility or the Gaming Activities, including, but not limited to, injuries resulting from entry onto the Tribe's land for purposes of patronizing the Gaming Facility or providing goods or services to the Gaming Facility, provided that any and all laws governing punitive damages need not be a part of the Ordinance.

(B) That the Tribe waives its right to assert sovereign immunity with respect to the arbitration and court review of

such claims but only up to the limits of the Policy; provided, however, such waiver shall not be deemed to waive or otherwise limit the Tribe's sovereign immunity beyond the Policy limits.

(C) That the Tribe consents to binding arbitration before a single arbitrator, who shall be a retired judge, in accordance with the comprehensive arbitration rules and procedures of JAMS (or if those rules no longer exist, the closest equivalent) to the extent of the limits of the Policy, that discovery in the arbitration proceedings shall be governed by section 1283.05 of the California Code of Civil Procedure, that the Tribe shall initially bear the cost of JAMS and the arbitrator, but the arbitrator may award costs to the prevailing party not to exceed those allowable in a suit in California Superior Court, and that any party dissatisfied with the award of the arbitrator may at the party's election invoke the JAMS Optional Arbitration Appeal Procedure (or if those rules no longer exist, the closest equivalent), provided that the party making such election must bear all costs and expenses of JAMS and the arbitrators associated with the Appeal Procedure regardless of the outcome. To effectuate its consent to the foregoing arbitration procedure, the Tribe shall, in the exercise of its sovereignty, waive its right to assert its sovereign immunity in connection with the arbitrator's jurisdiction and in any action brought in the United States District Court where the Tribe's Gaming Facility is located and the Ninth Circuit Court of Appeals (and any successor court), or, if the federal court declines to hear the action, in any action brought in the courts of the

State of California that are located in Riverside County, including courts of appeal, to (1) enforce the parties' obligation to arbitrate, (2) confirm, correct, modify, or vacate the arbitral award rendered in the arbitration, or (3) enforce or execute a judgment based upon the award. The Tribe agrees not to assert, and will waive, any defense alleging improper venue or forum non conveniens as to such state courts.

(D) The Ordinance may require that the claimant first exhaust the Tribe's administrative remedies, if any, for resolving the claim (hereinafter the "Tribal Dispute Resolution Process") in accordance with the following standards:

(1) That upon notice that a claimant alleges to have suffered an injury or damage, the Tribe or the Tribal Gaming Agency shall provide notice by personal service or certified mail, return receipt requested, that the claimant is required within 180 calendar days of receipt of the written notice ("limitation period") to proceed with the Tribal Dispute Resolution Process.

(2) That the claimant must bring his or her claim within 180 days of receipt of the written notice of the Tribal Dispute Resolution Process as long as the notice specified in subdivision (1) has been satisfied.

(3) That the arbitration may be stayed until the completion of the Tribal Dispute Resolution Process or 180 days from the date the

claim was filed, whichever first occurs, unless the parties mutually agree upon a longer period.

(4) That the decision of the Tribal Dispute Resolution Process be a reasoned decision, and shall be rendered within 180 days from the date the claim was filed.

(iii) Upon notice that a claimant claims to have suffered an injury or damage covered by this Section, the Tribe shall provide notice by personal service or certified mail, return receipt requested, that the claimant is required within the specified limitation period to first exhaust the Tribal Dispute Resolution Process, if any, and if dissatisfied with the resolution, is entitled to arbitrate his or her claim before a retired judge.

(iv) Failure to comply with this Section 10.2, subdivisions (d)(i), (d)(ii), or (d)(iii), shall be deemed a material breach of the Compact.

(v) At such time that the Tribe establishes a tribal court system, the Tribe may give notice to the State that it seeks to renegotiate in good faith this subdivision (d), in which case, the State shall be obligated to negotiate in good faith the arrangements, if any, by which the tribal court system will adjudicate claims of bodily injury, property damage, or personal injury covered under this subdivision (d). In so negotiating, the State shall give due respect to the sovereign rights of the Tribe, and due consideration to the due process safeguards established in the tribal court system, the transparency of the tribal court system, and the appellate rights afforded under the system.

VIII. WORKERS' COMPENSATION

Section 10.3(a) is amended to read as follows:

> **Section 10.3.** Participation in state statutory programs related to employment.
>
> (a) In lieu of permitting the Gaming Operation to participate in the state statutory workers' compensation system, the Tribe may create 23 and maintain a system that provides redress for Gaming Facility employees' work-related injuries through requiring insurance or self-insurance, which system must include a scope of coverage, provision of up to ten thousand dollars ($10,000) in medical treatment for alleged injury until the date that liability for the claim is accepted or rejected, employee choice of physician (either after thirty (30) days from the date of the injury is reported or if a medical provider network has been established, within the medical provider network), quality and timely medical treatment provided comparable to the state's medical treatment utilization schedule, availability of an independent medical examination to resolve disagreements on appropriate treatment (by an Independent Medical Reviewer on the state's approved list, a Qualified Medical Evaluator on the state's approved list, or an Agreed Medical Examiner upon mutual agreement of the employer and employee), the right to notice, hearings before an independent tribunal, a means of enforcement against the employer, and benefits (including, but not limited to, disability, rehabilitation and return to work) comparable to those mandated for comparable employees under state law. Not later than the effective date of this Amended Compact, or sixty (60) days prior to the commencement of Gaming Activities under this Amended Compact, the Tribe will (1) advise the State of its election to participate in the statutory

workers' compensation system or, alternatively, (2) forward to the State all relevant ordinances that have been adopted and all other documents establishing the system and demonstrating that the system is fully operational and compliant with the comparability standard set forth above. The Tribe may, no more than once every two calendar years thereafter, change its election by so notifying the State and providing such demonstration of compliance as required above, and shall allow thirty (30) days to elapse following notification to the State of such election before implementing any change to the system. The parties agree that independent contractors doing business with the Tribe must comply with all state workers' compensation laws and obligations.

IX. MITIGATION OF OFF-RESERVATION IMPACTS

Section 10.8 is repealed and replaced by the following:

Section 10.8. Off-Reservation Impact(s).

Section 10.8.1. Tribal Environmental Impact Report. (a) Before the commencement of any Project as defined in Section 10.8.7 herein, the Tribe shall prepare a tribal environmental impact report, (hereafter "TEIR"), analyzing the potentially significant off-reservation environmental impacts of the Project pursuant to the process set forth in this Section 10.8; provided, however, that information or data which is relevant to such a TEIR and is a matter of public record or is generally available to the public need not be repeated in its entirety in such TEIR, but may be specifically cited as the source for conclusions stated therein; and provided further that such information or data shall be briefly described, that its relationship to the TEIR shall be indicated, and that the source thereof shall be reasonably available for

inspection at a public place or public building. The TEIR shall provide detailed information about the Significant Effect(s) on the Off Reservation Environment which the Project is likely to have, including the matters set forth in Exhibit A, shall list ways in which the Significant Effects on the Environment might be minimized, and shall include a detailed statement setting forth all of the following:

(i) All Significant Effects on the Off-Reservation Environment of the proposed Project;

(ii) In a separate section:

(A) Any Significant Effect on the Off-Reservation .Environment that cannot be avoided if the Project is implemented;

(B) Any Significant Effect on the Off-Reservation Environment that would be irreversible if the Project is implemented;

(iii) Mitigation measures proposed to minimize Significant Effects on the Off-Reservation Environment, including, but not limited to, measures to reduce the wasteful, inefficient, or unnecessary consumption of energy;

(iv) Whether any proposed mitigation is feasible;

(v) Alternatives to the Project; provided that the Tribe need not address alternatives that would require it to forgo its right to engage in the Gaming Activities authorized by this Amended Compact on its Indian lands;

(vi) Any direct growth-inducing impacts of the Project; and

(vii) Whether the proposed mitigation would be effective to Substantially reduce the potential Significant Effects on the Off Reservation Environment.

(b) In addition to the information required pursuant to subdivision (a), the TEIR shall also contain a statement briefly indicating the reasons for determining that various effects of the Project on the off-reservation environment are not significant and consequently have not been discussed in detail in the TEIR. In the TEIR, the direct and indirect Significant Effects on the Off-Reservation Environment, including each of the items on Exhibit A, shall be clearly identified and described, giving due consideration to both the short-term and long-term effects. The discussion of mitigation measures shall describe feasible measures which could minimize significant adverse effects, and shall distinguish between the measures that are proposed by the Tribe and other measures proposed by others. Where several measures are available to mitigate an effect, each should be discussed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures should not be deferred until some future time. The TEIR shall also describe a range of reasonable Project alternatives, which would feasibly attain most of the objectives of the Project and which would avoid or substantially lessen any of the Significant Effects on the Off Reservation Environment, and evaluate the comparative merits of the alternatives; provided that the Tribe need not address alternatives that would cause it to forgo its right to engage in the Gaming Activities authorized by this Amended Compact on its Indian lands. The TEIR must include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison. The TEIR shall also contain an index or table of contents and a summary, which shall identify each Significant Effect on the Off-Reservation Environment with proposed mitigation measures and alternatives that would reduce or avoid that effect, and issues to be resolved, including the choice among

alternatives and whether and how to mitigate the Significant Effects on the Environment. Previously approved land use documents, including, but not limited to, general plans, specific plans, and local coastal plans, may be used to discuss cumulative impact analysis.

Section 10.8.2. Notice of Preparation of Draft TEIR.

(a) Upon commencing the preparation of the draft TEIR, the Tribe shall issue a Notice of Preparation to the State Clearinghouse in the State Office of Planning and Research ("State Clearinghouse"), to the County of Riverside, to the public and to other Interested Persons, Agencies and cities. The Notice shall provide all Interested Persons with information describing the Project and its potential Significant Effects on the Environment sufficient to enable Interested Persons to make a meaningful response or comment. At a minimum, the Notice shall include all of the following information:

(i) A description of the Project;

(ii) The location of the Project shown on a detailed map, preferably topographical, and on a regional map; and

(iii) The probable off-reservation environmental effects of the Project.

(b) The Notice shall also inform Interested Persons of the opportunity to provide comments to the Tribe within thirty (30) days of the date of receipt of the Notice by the State Clearinghouse and the County. The Notice shall also request Interested Persons to identify in their comments the off-reservation environmental issues and reasonable mitigation measures that the Tribe will need to have explored in the draft TEIR.

Section 10.8.3. Notice of Completion of the Draft TEIR.

(a) Within no less than thirty (30) days following receipt of the Notice of Preparation by the State Clearinghouse and the County, the Tribe shall file a copy of the draft TEIR and a Notice of Completion with the State Clearinghouse, the County, the local city (if any) within which the Project is located, and the California Department of Justice. The Notice of Completion shall include all of the following information:

(i) A brief description of the Project;

(ii) The proposed location of the Project;

(iii) An address where copies of the draft TEIR are available; and

(iv) Notice of a period of forty-five (45) days during which the Tribe may receive comments on the draft TEIR.

(b) The Tribe will submit forty-five (45) copies of the draft TEIR and Notice of Completion to the County, which will be asked to serve in a timely manner the Notice of Completion to all Interested Persons and asked to post public notice of the draft TEIR at the Office of the County Board of Supervisors and to furnish the public notice at the public libraries serving the County. In addition, the Tribe will provide public notice by at least one of the procedures below:

(i) Publication of the Notice of Completion at least one time by the Tribe in a newspaper of general circulation in the area

affected by the Project. If more than one area is affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas; or

(ii) Direct mailing by the Tribe of the Notice of Completion to the owners and occupants of property adjacent to, but outside, the Indian lands on which the Project is to be located. Owners of such property shall be identified as shown on the latest equalization assessment roll.

Section 10.8.4. Issuance of Final TEIR. The Tribe shall prepare, certify and make available to the County and the local city (if any) within which the Project is located, a Final TEIR, which shall consist of:

(i) The draft TEIR or a revision of the draft;

(ii) Comments and recommendations received on the draft TEIR either verbatim or in summary;

(iii) A list of persons, organizations, and public agencies commenting on the draft TEIR;

(iv) The responses of the Tribe to significant environmental points raised in the review and consultation process; and

(v) Any other relevant comments and information added by the Tribe.

Section 10.8.5. The Tribe shall reimburse the

County for copying and mailing costs resulting from making the Notice of Preparation, Notice of Completion, and Draft TEIR available to the public under this Section 10.8.

Section 10.8.6. The Tribe's failure to prepare a TEIR when required may warrant an injunction where appropriate.

Section 10.8.7. Definitions. For purposes of this Section 10.8, the following terms shall be defined as set forth in this Section 10.8.7.

(a) "Project" is defined as any activity occurring on Indian lands, a principal purpose of which is to serve the Tribe's Gaming Activities or Gaming Operation and which may cause either a direct physical change in the off-reservation environment, or a reasonably foreseeable indirect physical change in the off-reservation environment. This definition shall be understood to include, but not be limited to, the construction or planned expansion of any Gaming Facility and any construction or planned expansion, a principal purpose of which is to serve a Gaming Facility, including, but not limited to, access roads, parking lots, a hotel, an entertainment facility, utility or waste disposal systems, or water supply, as long as such construction or expansion causes a direct or indirect physical change in the off-reservation environment.

(b) "Significant Effect(s) on the Environment" is the same as "Significant Effect(s) on the Off-Reservation Environment" and occur(s) if any of the following conditions exist:

(i) A proposed Project has the potential to degrade the quality of the off-reservation environment, reduce the off-reservation habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, eliminate an off-reservation plant or animal community, reduce the

number or restrict the range of an endangered, rare or threatened species, or eliminate important examples of the major periods of California history or prehistory, or to achieve short-term, to the disadvantage of long-term, environmental goals.

(ii) The possible effects on the off-reservation environment of a Project are individually limited but cumulatively considerable. As used herein, "cumulatively considerable" means that the incremental effects of an individual Project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effect of probable future projects.

(iii) The off-reservation environmental effects of a Project will cause substantial adverse effects on human beings, either directly or indirectly.

For purposes of this definition, reservation refers to Indian lands within the meaning of IGRA.

(c) "Interested Persons" means (i) all local, State, and federal agencies, which, if a Project were not taking place on Indian lands, would have responsibility for approving the Project or would exercise authority over the natural resources that may be affected by the Project, (ii) Any city with a nexus to the Project, and (iii) any other persons, groups, or agencies that request in writing a notice of preparation of a draft TEIR or have commented on the Project in writing to the Tribe or the County.

Section 10.8.8.

Intergovernmental Agreement.

Before commencement of a Project and no later than when the Tribe issues its Final TEIR, the Tribe shall offer to begin negotiations with the County and any impacted City in which the Gaming Facility is located or adjacent to, (hereafter "Impacted City"), and upon the County's and/or any Impacted City's acceptance of the Tribe's offers, shall negotiate with the County and any Impacted City and shall enter into enforceable written agreements with the County and any Impacted City which include all of the following:

(i) Provisions providing for the timely mitigation of any Significant Effect on the Off-Reservation Environment (which effects may include, but are not limited to, adverse changes in aesthetics, agricultural resources, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, water resources, land use, mineral resources, traffic, noise, utilities and service systems, and cumulative effects), where such effect is attributable, in whole or in part, to . the Project, unless the parties agree that the particular mitigation is infeasible, taking into account economic, environmental, social, technological, and/or other considerations.

(ii) Provisions relating to reasonable compensation for law enforcement, fire protection, emergency medical services and any other public services to be provided by the County and any Impacted City to the Tribe for the

purposes of the Tribe's Gaming Operation as a consequence of the Project.

(iii) Provisions providing for mitigation of any effect on public safety attributable to the Project, including any reasonable compensation to the County and any Impacted City as a consequence thereof.

(iv) Provisions providing for reasonable compensation for programs designed to address gambling addiction.

Section 10.8.9. Dispute Resolution Process

(a) In order to foster good government-to-government relationships and to assure that the Tribe is not unreasonably prevented from commencing a Project and benefiting therefrom, if an agreement with the County and any Impacted City, if any, is not entered into within fifty-five (55) days of the submission of the Final TEIR, or such further time as the Tribe or the County or Impacted City (for the purposes of this Section "the parties") may mutually agree in writing, any party may demand binding arbitration before, a single arbitrator pursuant to the comprehensive arbitration rules and procedures of JAMS (or if those rules no longer exist, the closest equivalent) with respect to disputes over mitigation or compensation on which the parties cannot reach agreement. Upon mutual agreement of the parties, the arbitration may be before a panel of three arbitrators. Any party dissatisfied with the award of the arbitrator may at the party's election invoke the JAMS Optional Arbitration Appeal Procedure (and if those rules no longer exist, the closest equivalent); provided that the party making such election must bear all costs and expenses of JAMS and the arbitrators associated with the Appeal Procedure

regardless of the outcome.

(b) With respect to each dispute specified in subdivision (a), the arbitrator shall issue an award that provides for feasible mitigation of Significant Effects on the Off-Reservation Environment and on public safety. and which reasonably compensates for public services pursuant to Section 10.8.8, without unduly interfering with the principal objectives of the Project or imposing environmental mitigation measures which are different in nature or scale from the type of measures that have been required to mitigate impacts of a similar scale of other projects in the surrounding area, to the extent there are such other projects. The arbitrator shall take into consideration whether the final TEIR provides the data and information necessary to enable the County to determine both whether the Project may result in a Significant Effect on the Off-Reservation Environment and whether the proposed measures in mitigation are sufficient to mitigate any such effect. The arbitrator may require the parties to produce evidence in support of or in opposition to any factual matter deemed by the arbitrator to be relevant and material to the determination of the dispute. If any party does not participate in the arbitration, the arbitrator shall nonetheless conduct the arbitration and issue an award, and the participating party or parties shall submit such evidence as the arbitrator may require therefore. The award shall be deemed part of the Intergovernmental Agreement provided for under Section 10.8.8, and upon request of either party, the arbitrator may include those mitigation and compensation measures upon which the parties have agreed in the award. To effectuate its consent to the foregoing arbitration procedure, the Tribe shall, in the exercise of its sovereignty, waive its right to assert its sovereign immunity in connection with the arbitrator's jurisdiction and in any action brought in the United States District Court where the Tribe's Gaming Facility is located and the Ninth Circuit Court of Appeals (and any successor court), or, if the federal court declines to hear the action, in any action brought in the courts of the State of California that

are located in Riverside County, including courts of appeal, to (1) enforce the parties' obligation to arbitrate, (2) confirm, correct; modify, or vacate the arbitral award rendered in the arbitration, or (3) enforce or execute a judgment based upon the award. The Tribe agrees not to assert, and will waive, any defense alleging improper venue or forum non conveniens as to such state courts.

X. LICENSURE OF FINANCIAL SOURCES

Section 6.4.6 is repealed and replaced by the following:

Section 6.4.6. Financial Sources.

(a) Subject to subdivision (e) of this Section 6.4.6, any person or entity extending financing, directly or indirectly, to the Tribe for a Gaming Facility or a Gaming Operation (a "Financial Source") shall be licensed by the Tribal Gaming Agency prior to extending that financing.

(b) A license issued under this Section shall be reviewed at least every two (2) years for continuing compliance. In connection with such a review, the Tribal Gaming Agency shall require the Financial Source to update all information provided in the previous application. For purposes of Section 6.5.2, such a review shall be deemed to constitute an application for renewal.

(c) Any agreement between the Tribe and a Financial Source shall be deemed to include a provision for its termination without further liability on the part of the Tribe, except for the bona fide repayment of all outstanding sums (exclusive of

interest) owed as of the date of termination, upon revocation or non-renewal of the Financial Source's license by the Tribal Gaming Agency based on a determination of unsuitability by the State Gaming Agency. The Tribe shall not enter into, or continue to make payments pursuant to, any contract or agreement for the provision of financing with any person whose application to the State Gaming Agency for a determination of suitability has been denied or has expired without renewal.

(d) A Gaming Resource Supplier who provides financing exclusively in connection with the provision, sale, or lease of Gaming Resources obtained from that Supplier may be licensed solely in accordance with licensing procedures applicable, if at all, to Gaming Resource Suppliers, and need not be separately licensed as a Financial Source under this Section.

(e) (i) The Tribal Gaming Agency may, at its discretion, exclude from the licensing requirements of this Section, the following Financial Sources under the circumstances stated.

(A) A federally-regulated or state-regulated bank, savings and loan association, or other federally- or state-regulated lending institution.

(B) An entity identified by Uniform Tribal Gaming Regulation CGCC-2, subdivision (f) (as in effect on July 1,2006) of the California Gambling Control Commission, when that entity is a Financial Source solely by reason of being (1) a purchaser or a holder of debt securities issued directly or indirectly by the Tribe for a Gaming Facility or by the Gaming Operation or (2) the owner of a participation interest in any

amount of indebtedness for which a Financial Source described in subdivision (e)(i)(A) is the creditor.

(C) An investor who, alone or together with any person controlling, controlled by or under common control with such investor, holds less than 10% of all outstanding debt securities issued directly or indirectly by the Tribe for a Gaming Facility or by the Gaming Operation.

(D) An agency of the federal, state or local government providing financing, together with any person purchasing any debt securities of the agency to provide such financing.

(ii) The following are not Financial Sources for purposes of this Section.

(A) An entity identified by Uniform Tribal Gaming Regulation CGCC-2, subdivision (h) (as in effect on July 1, 2006) of the California Gambling Control Commission.

(B) A person or entity whose sole connection with a provision or extension of financing to the Tribe is to provide loan brokerage or debt servicing for a Financial Source at no cost to the Tribe or the Gaming Operation, provided that no portion of any financing provided is an extension of credit to the Tribe or the Gaming Operation by that person or entity.

(C) The holder of any Letter-of-Credit-Backed Bonds identified in Uniform Tribal Gaming Regulation CGCC-1 (as in effect on July 1, 2006), so long as the criteria set forth in Uniform Tribal Gaming Regulations CGCC-1(a)(l) and CGCC-1(a)(2) are met.

(f) In recognition of changing financial circumstances, this Section shall be subject to good faith renegotiation upon request of either party; provided such renegotiation shall not retroactively affect transactions that have already taken place where the Financial Source has been excluded or exempted from licensing requirements.

XI. EFFECTIVE DATE AND TERM OF COMPACT

A. Section 11.1 is amended to read in its entirety as follows:

> **Section 11.1. Effective Date.** This Amendment shall not be effective unless and until both of the following have occurred: (a) This Amendment to the 1999 Compact is ratified in accordance with state law; and (b) Notice of approval or constructive approval by the United States Secretary of the Interior is published in the Federal Register as provided in 25 U.S.C. Section 2710(d)(3)(B).

B. Section 11.2.1(a) is repealed and replaced by the following:

> **Section 11.2.1(a)** Once effective, this Amended Compact shall remain in full force and effect until December 31,2030. No later than July 1, 2028, the State or the Tribe may request good faith negotiations to extend and modify this Amended Compact or enter into a

new compact. Upon such request by either the State or the Tribe, the parties shall confer promptly and schedule within 30 calendar days of the request a meeting for commencing negotiations. Nothing in this provision shall preclude the State and the Tribe from engaging in good faith negotiations at any time during the term of this Amended Compact.

C. **Section 11.2.1(b)** is repealed.

XII. NOTICES

A. **Section 13.0** is amended to read:

Section 13.0. Unless otherwise indicated by this Amended Compact, all notices required or authorized to be served shall be served by first-class mail at the following addresses:

Governor
State Capitol
Sacramento, California
95814

Tribal Chairperson
Pechanga Band of
Luiseño Indians
P.O. Box 1477
Temecula, CA 92592

The Tribe or State may change the address to which notices shall be sent by providing twenty (20) days written notice to the other party.

XIII. MISCELLANEOUS

A. A new **Section 15.7** is hereby added as follows:

Section 15.7. Calculation of time. In computing any period of time prescribed by this Amended Compact, the day of the event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday under the Tribe's laws, State law, or federal law. Unless otherwise specifically provided herein, the term "days" shall be construed as calendar days.

B. A new **Section 15.8** is hereby added as follows:

Section 15.8. Whenever the Tribe adopts or amends any ordinance required to be adopted and/or maintained under the 1999 Compact or this Amended Compact, the Tribe shall provide a copy of such adopted or amended ordinance to the Governor's Legal Affairs Secretary within thirty (30) days of the effective date of such amended ordinance.

C. A new **Section 15.9** is hereby added as follows:

Section 15.9. The Tribe expressly represents that, as of the date of the Tribe's execution of this Amended Compact, the undersigned Chairman has the authority to execute this Amendment on behalf of the Tribe, including any waivers of the right to immunity therein, and will provide written proof of such authority and of the ratification of this Amendment by the tribal governing body to the Governor no later than thirty (30) days after this Amendment's execution by the Tribal Chairman. In entering into

this Amendment, the State expressly relies upon the foregoing representations by the Tribe, and the State's entry into this Amendment is expressly made contingent upon the truth of those representations. If the Tribe fails to provide written proof of authority to execute this Amendment or written proof of ratification by the Tribe's governing body within thirty (30) days of the Tribal Chairman's execution of this Amendment, the Governor may declare this Compact null and void by written notice filed with the California Secretary of State within ninety (90) days of the Governor's execution of this Amendment.

The undersigned sign this Amendment on behalf of the State of California and the Pechanga Band of Luiseño Indians.

STATE OF CALIFORNIA	PECHANGA BAND OF LUISENO INDIANS
By Arnold Schwarzenegger Governor of the State of California	By: Mark A. Macarro Chairman of the Pechanga Band of Luiseño Indians
Executed .this 28th day of August, 2006, at Sacramento, California	Executed .this 28th day of August, 2006, at Sacramento, California

ATTEST:

Bruce McPherson
Secretary of State, State of California

EXHIBIT A

OFF-RESERVATION ENVIRONMENTAL IMPACT ANALYSIS CHECKLIST

I. AESTHETICS

Would the project:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
a) Have a substantial adverse effect on a scenic vista?	☐	☐	☐	☐
b) Substantially damage off-reservation scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	☐	☐	☐	☐
c) Create a new source of substantial light or glare, which would adversely affect day or nighttime views of historic buildings or views in the area?	☐	☐	☐	☐

II. AGRICULTURAL RESOURCES

Would the project:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
a) Involve changes in the existing environment, which, due to their location or nature, could result in conversion of off-reservation farmland to non-agricultural use?	☐	☐	☐	☐

III. AIR QUALITY

Would the project:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
a) Conflict with or obstruct implementation of the applicable air quality plan?	☐	☐	☐	☐
b) Violate any air quality standard or contribute to an existing or projected air quality violation?	☐	☐	☐	☐
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air	☐	☐	☐	☐

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
quality standard (including releasing emissions, which exceed quantitative thresholds for ozone precursors)?				
d) Expose off-reservation sensitive receptors to substantial pollutant concentrations?	☐	☐	☐	☐
e) Create objectionable odors affecting a substantial number of people off-reservation?	☐	☐	☐	☐

IV. BIOLOGICAL RESOURCES

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a) Have a substantial adverse impact, either directly or through habitat modifications, on any species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	☐	☐	☐	☐
b) Have a substantial adverse effect on any off-reservation riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	☐	☐	☐	☐
c) Have a substantial adverse effect on federally protected off-reservation wetlands as defined by Section 404 of the Clean Water Act?	☐	☐	☐	☐
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	☐	☐	☐	☐
e) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	☐	☐	☐	☐

V. CULTURAL RESOURCES

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a) Cause a substantial adverse change in the significance of an off-reservation historical or archeological resource?	☐	☐	☐	☐
b) Directly or indirectly destroy a unique off-reservation paleontological resource or site or unique off-reservation geologic feature?	☐	☐	☐	☐
c) Disturb any off-reservation human remains, including those interred outside of formal cemeteries?	☐	☐	☐	☐

VI. GEOLOGY AND SOILS

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a) Expose off-reservation people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:				
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	☐	☐	☐	☐
ii) Strong seismic ground shaking?	☐	☐	☐	☐
iii) Seismic-related ground failure, including liquefaction?	☐	☐	☐	☐
iv) Landslides?	☐	☐	☐	☐
b) Result in substantial off-reservation soil erosion or the loss of topsoil?	☐	☐	☐	☐

VII. HAZARDS AND HAZARDOUS MATERIALS

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a) Create a significant hazard to the off-reservation public or the off-reservation environment through the routine transport, use, or disposal of hazardous materials?	☐	☐	☐	☐

b) Create a significant hazard to the off-reservation public or the off-reservation environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	☐	☐	☐	☐
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed off-reservation school?	☐	☐	☐	☐
d) Expose off-reservation people or structures to a significant risk of loss, injury or death involving wildland fires.	☐	☐	☐	☐

VIII. WATER RESOURCES

Would the project:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
a) Violate any water quality standards or waste discharge requirements?	☐	☐	☐	☐
b) Substantially deplete off-reservation groundwater supplies or interfere substantially with groundwater recharge such that there should be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	☐	☐	☐	☐
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion of siltation off-site?	☐	☐	☐	☐
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding off-site?	☐	☐	☐	☐
e) Create or contribute runoff water which would exceed the capacity of existing or planned storm water drainage systems or provice substantial additional sources of polluted runoff off-reservation?	☐	☐	☐	☐
f) Place within a 100-year flood hazard area structures, which would impede or redirect off-reservation flood flows?	☐	☐	☐	☐
g) Expose off-reservation people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	☐	☐	☐	☐

IX. LAND USE

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a) Conflict with any off-reservation land use plan, policy, or regulation of an agency adopted for the purpose of avoiding or mitigating an environmental effect?	☐	☐	☐	☐
b) Conflict with any applicable habitat conservation plan or natural communities conservation plan covering off-reservation lands?	☐	☐	☐	☐

X. MINERAL RESOURCES

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a) Result in the loss of availability of a known off-reservation mineral resource classified MRZ-2 by the State Geologist that would be of value to the region and the residents of the state?	☐	☐	☐	☐
b) Result in the loss of availability of an off-reservation locally important mineral resource recovery site delineated on a local general plan, specific plan, or other land use plan?	☐	☐	☐	☐

XI. NOISE

Would the project result in:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a) Exposure of off-reservation persons to noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	☐	☐	☐	☐
b) Exposure of off-reservation persons to excessive groundborne vibration or groundborne noise levels?	☐	☐	☐	☐
c) A substantial permanent increase in ambient noise levels in the off-reservation vicinity of the project?	☐	☐	☐	☐
d) A substantial temporary or periodic increase in ambient noise levels in the off-reservation vicinity of the project?	☐	☐	☐	☐

XII. POPULATION AND HOUSING

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a) Induce substantial off-reservation population growth?	☐	☐	☐	☐
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere off-reservation?	☐	☐	☐	☐

XIII. PUBLIC SERVICES

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a) Result in substantial adverse physical impacts associated with the provision of new or physically altered off-reservation governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for any of the off-reservation public services:				
Fire protection?	☐	☐	☐	☐
Police protection?	☐	☐	☐	☐
Schools?	☐	☐	☐	☐
Parks?	☐	☐	☐	☐
Other public facilities?	☐	☐	☐	☐

XIV. RECREATION

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a) Increase the use of existing off-reservation neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	☐	☐	☐	☐

XV. TRANSPORTATION / TRAFFIC

Would the project:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
a) Cause an increase in off-reservation traffic, which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume-to-capacity ratio on roads, or congestion at intersections)?	☐	☐	☐	☐
b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated off-reservation roads or highways?	☐	☐	☐	☐
c) Substantially increase hazards to an off-reservation design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	☐	☐	☐	☐
d) Result in inadequate emergency access for off-reservation responders?	☐	☐	☐	☐

XVI. UTILITIES AND SERVICE SYSTEMS

Would the project:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
a) Exceed off-reservation wastewater treatment requirements of the applicable Regional Water Quality Control Board?	☐	☐	☐	☐
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant off-reservation environmental effects?	☐	☐	☐	☐
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant off-reservation environmental effects?	☐	☐	☐	☐
c) Result in a determination by an off-reservation wastewater treatment provider (if applicable), which serves or may serve the project that it has inadequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	☐	☐	☐	☐

XVII. CUMULATIVE EFFECTS

Would the project:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
a) Have impacts that are individually limited, but cumulatively considerable off-reservation? "Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past, current, or probable future projects.	☐	☐	☐	☐